

**PROGRAMMATIC AGREEMENT**  
**PURSUANT TO SECTION 106 OF THE**  
**NATIONAL HISTORIC PRESERVATION ACT**  
**REGARDING**

**IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS**  
**IN THE STATE OF ARIZONA**

This Programmatic Agreement (Agreement) is among the Federal Highway Administration (FHWA), the Arizona Department of Transportation (ADOT), the Arizona State Historic Preservation Officer (SHPO), the Bureau of Indian Affairs, Western Regional Office (BIA Western), the Bureau of Indian Affairs, Navajo Regional Office (BIA Navajo), the Bureau of Land Management (BLM), the Bureau of Reclamation (Reclamation), the United States Army Corps of Engineers (USACE), the United States Forest Service, Southwest Regional Office (USFS), the Arizona State Land Department (ASLD), Arizona State Parks (ASP), the Arizona State Museum (ASM), the Gila River Indian Community, the Hualapai Tribe and the Advisory Council on Historic Preservation (ACHP) (collectively the signatories).

**WHEREAS**, FHWA implements the Federal-aid Highway Program (Program) in the state of Arizona by funding and approving state and locally sponsored transportation projects that are administered by ADOT; and

**WHEREAS**, Program-funded projects are undertakings subject to Section 106 of the National Historic Preservation Act (NHPA) [54 United States Code (USC) § 306108] and its implementing regulations at 36 Code of Federal Regulations (CFR) Part 800 (Section 106); and

**WHEREAS**, Arizona FHWA Division Administrator is responsible for ensuring that the Program in the state of Arizona complies with Section 106; therefore, FHWA is a signatory to this Agreement; and

**WHEREAS**, FHWA has determined that implementation of the Program in Arizona may have an effect upon historic properties included in, or eligible for inclusion in, the National Register of Historic Places (National Register); and

**WHEREAS**, the signatories have developed this Agreement pursuant to 36 CFR § 800.14(b) in order to establish a program alternative for taking into account the effects of the Program on historic properties in Arizona and for affording ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

**WHEREAS**, FHWA has notified ACHP about the potential for effects resulting from Program-funded undertakings and has invited ACHP to participate in developing this Agreement as a signatory and ACHP has accepted the invitation; and

**WHEREAS**, ADOT administers Program-funded projects throughout the state of Arizona and plays a substantial role in this Agreement; therefore, FHWA has invited ADOT to be a signatory to this Agreement; and

**WHEREAS**, FHWA, ADOT and SHPO agree that approval of commercial material sources for Program-funded projects is a state action not subject to Section 106 review, as described in Stipulation IX below; and

**WHEREAS**, ADOT, through this Agreement, will satisfy its responsibilities under the State Historic Preservation Act of 1982 Arizona Revised Statutes (ARS) §§ 41-861 through 41-864 for Program-funded projects, as applicable; and

**WHEREAS**, ADOT intends to utilize this Agreement to assist FHWA in Section 106 compliance for Program-funded Local Public Agency (LPA) transportation projects; and

**WHEREAS**, SHPO is authorized to enter into this Agreement pursuant to Sections 101 and 106 of NHPA, as amended, and pursuant to 36 CFR §§ 800.2(c)(1)(i) and 800.6(b)(1)(i), in order to fulfill its role of advising and assisting federal agencies in carrying out their responsibilities; therefore SHPO is a signatory to this Agreement; and

**WHEREAS**, SHPO is also authorized to advise and assist federal and state agencies in carrying out their historic preservation responsibilities and cooperate with these agencies under ARS § 41-511.04(D)(4); and

**WHEREAS**, ADOT has an Interagency Service Agreement with SHPO in which SHPO has agreed to respond to an ADOT request for Section 106 consultation within 15 calendar days, and as such, consultations between FHWA or ADOT and SHPO will be conducted within this time frame unless otherwise negotiated; and

**WHEREAS**, ASP, with assistance from ADOT, administers the Program-funded Recreational Trails Program (RTP); therefore, FHWA has invited ASP to be a signatory to this Agreement; and

**WHEREAS**, Program-funded transportation projects may cross lands managed by USFS; therefore, FHWA has invited USFS to be a signatory to this Agreement. FHWA will be the lead federal agency for Section 106 compliance on Program-funded transportation projects that cross lands managed by USFS unless, on a case by case basis, both agencies agree in writing that for a specific undertaking, USFS will take the lead; and

**WHEREAS**, Program-funded transportation projects may cross lands managed by BLM; therefore, FHWA has invited BLM to be a signatory to this Agreement. FHWA will be the lead federal agency for Section 106 compliance on Program-funded transportation projects that cross lands managed by BLM unless, on a case by case basis, both agencies agree in writing that for a specific undertaking, BLM will take the lead; and

**WHEREAS**, Program-funded transportation projects may cross lands and structures owned or managed by Reclamation, including National Register eligible canals, ditches, and dams, which may result in effects to historic properties subject to Section 106; therefore, FHWA has invited Reclamation to be a signatory to this Agreement. FHWA will be the lead federal agency for Section 106 compliance on Program-funded transportation projects that cross lands or properties managed by Reclamation; and

**WHEREAS**, Program-funded transportation projects may cross National Register eligible dams, canals, and ditches associated with the historic Salt River Project (SRP System) that are owned by Reclamation and managed by Salt River Project (SRP), and are included in two Section 106 Programmatic Agreements (PAs) among Reclamation, SRP, and SHPO regarding the operations and maintenance of these facilities that are part of the SRP System. Copies of the PAs are presented in Attachment 1 (Bureau of Reclamation Programmatic Agreements). The PAs are entitled:

- *“Programmatic Agreement Among the Bureau of Reclamation, Phoenix Area Office, Salt River Project, and the Arizona State Historic Preservation Office Regarding Historic Preservation Treatment for the Salt River Project System of Historic Dams and Associated Dam Facilities Operated and Maintained by the Salt River Project for the Bureau of Reclamation” (Reclamation PA 2009)*
- *“Programmatic Agreement Among the Bureau of Reclamation, Phoenix Office, the Arizona State Historic Preservation Officer, and the Salt River Project Regarding the Historic Preservation Treatment for the Salt River Project System of Historic Main Canals, Laterals, and Associated Features Operated and Maintained by the Salt River Project for the Bureau of Reclamation” (Reclamation PA 2013); and*

**WHEREAS**, SRP is the manager of National Register eligible canals and ditches associated with the historic SRP System; therefore, FHWA has invited SRP to be a concurring party to this Agreement; and

**WHEREAS**, FHWA will be the lead federal agency for Section 106 compliance on Program-funded transportation projects that cross waterways requiring a permit from the USACE under Section 10 of the Rivers and Harbors Act of 1899, as amended (33 USC § 403), or Section 404 of the Clean Water Act of 1972 as amended (33 USC § 1344), the issuance of which is an undertaking subject to Section 106; therefore, FHWA has invited USACE to be a signatory to this Agreement; and

**WHEREAS**, all Tribes consulted during the preparation of this Agreement are collectively referred to herein as the “Tribes” or individually as “Tribe;” and

**WHEREAS**, Program-funded transportation projects may cross lands held in trust by BIA Western for the Tribes requiring approvals of rights-of-way (ROWs), which are subject to Section 106 compliance; therefore, FHWA has invited BIA Western to be a signatory to this Agreement. FHWA will be the lead federal agency for Section 106 compliance on Program-funded transportation projects that cross lands held in trust by BIA Western unless, on a case by case basis, both agencies agree in writing that for a specific undertaking, BIA Western will take the lead; and

**WHEREAS**, Program-funded transportation projects may cross lands held in trust by BIA Navajo for the Tribes requiring approvals of ROW, which are subject to Section 106 compliance; therefore, FHWA has invited BIA Navajo to be a signatory to this Agreement. FHWA will be the lead federal agency for Section 106 compliance on Program-funded transportation projects that cross lands held in trust by BIA Navajo unless, on a case by case basis, both agencies agree in writing that for a specific undertaking, BIA Navajo will take the lead; and

**WHEREAS**, FHWA recognizes that it has a unique legal relationship with Indian Tribes and that consultation with an Indian Tribe must, therefore, recognize the government-to-government relationship between the federal government and the Tribes; and

**WHEREAS**, FHWA has consulted with the federally recognized resident Tribes listed below, regarding Program-funded undertakings that may affect historic properties of concern to them and has invited these Tribes to be concurring parties to this Agreement; and

- Ak-Chin Indian Community
- Cocopah Tribe of Arizona
- Fort McDowell Yavapai Nation
- Fort Mojave Indian Tribe (Arizona, California and Nevada)
- Havasupai Tribe of the Havasupai Reservation
- Hopi Tribe of Arizona
- Kaibab Band of Paiute Indians of the Kaibab Indian Reservation
- Pascua Yaqui Tribe of Arizona
- Quechan Tribe of the Fort Yuma Indian Reservation
- Salt River Pima-Maricopa Indian Community of the Salt River Reservation
- San Juan Southern Paiute Tribe of Arizona
- Tonto Apache Tribe of Arizona
- Yavapai-Apache Nation of the Camp Verde Indian Reservation
- Yavapai-Prescott Indian Tribe of the Yavapai Reservation

**WHEREAS**, FHWA has consulted with the federally recognized resident Tribes listed below, regarding Program-funded undertakings that may affect historic properties of concern to them. These Tribes are certified by the National Park Service as Tribal Historic Preservation Officers (THPOs), as provided for under Section 101(d)(2) of NHPA, and have assumed the duties of SHPO for all undertakings on lands managed by their respective Tribes. FHWA has invited these Tribes to be concurring parties to this Agreement; and:

- Colorado River Indian Tribes
- Gila River Indian Community
- Hualapai Tribe
- Navajo Nation
- San Carlos Apache Tribe
- Tohono O’odham Nation
- White Mountain Apache Tribe
- Pueblo of Zuni

**WHEREAS**, FHWA has consulted with the federally recognized non-resident Tribes listed below, with ancestral ties to land within the state of Arizona regarding Program-funded undertakings that may affect historic properties of concern to them and has invited these Tribes to be concurring parties to this Agreement; and:

- Chemehuevi Indian Tribe
- Fort Sill Apache Tribe
- Mescalero Apache Tribe
- Moapa Band of Paiute Indians
- Paiute Indian Tribe of Las Vegas
- Paiute Indian Tribe of Utah
- Ute Mountain Ute Tribe

**WHEREAS**, Chemehuevi Indian Tribe and the Paiute Indian Tribe of Utah have declined to participate in this Agreement and will not be concurring parties; and

**WHEREAS**, this Agreement shall not apply to Tribal lands unless the Tribes are full signatories; and

**WHEREAS**, any Tribe that is a resident Tribe in the state of Arizona may make a request to FHWA to become a full signatory to this Agreement at the time of execution or afterwards. The process for adding signatories is presented below (see Stipulation XXII.A). A resident Tribe that becomes a full signatory to this Agreement is referred to as a “Signatory Tribe,” as defined in Attachment 2 (Acronyms, Abbreviations and Definitions). Upon signing as a full signatory, the terms of this Agreement will apply to Program-funded undertakings on the Signatory Tribe’s Tribal lands; and

**WHEREAS**, the Hualapai Tribe has signed this Agreement as a full signatory; and

**WHEREAS**, the Gila River Indian Community has signed this Agreement as a full signatory; and

**WHEREAS**, ASLD administers state trust land crossed by ADOT highway projects; therefore, FHWA has invited ASLD to be a signatory to this Agreement; and

**WHEREAS**, Arizona State Museum (ASM) issues permits for archaeological investigations and administers discoveries of human remains on state, county, and municipal land in Arizona pursuant to ARS § 41-842 and ARS § 41-844, respectively, and administers discoveries of human remains on private land in Arizona pursuant to ARS § 41-865, and; therefore, FHWA has invited ASM to be a concurring party to this Agreement; and

**WHEREAS**, for the review of specific undertakings under this Agreement, FHWA may invite other agencies, organizations, and individuals to participate as consulting parties; and

**WHEREAS**, all signatories and invited signatories are collectively referred to herein as the “signatories” or individually as “signatory;” and

**WHEREAS**, ADOT, with funding provided by FHWA, is preparing a historic context study for the state’s historic highway system and intends to develop a separate PA for the management of historic roads in compliance with Section 106. The historic roads PA will address the potential effects of Program-funded undertakings to the state historic highway system in conjunction with the terms of this Agreement.

**NOW, THEREFORE**, the signatories agree that the Program in Arizona shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in Arizona and that these stipulations shall govern compliance of the Program with Section 106.

## **STIPULATIONS**

FHWA, assisted by ADOT, will ensure that the following stipulations are carried out:

### **I. Purpose and Applicability**

- A. This Agreement shall apply to all federal undertakings administered under the Program in Arizona for which FHWA is the lead federal agency, and sets forth the process by which FHWA will meet its Section 106 responsibilities.

- B. This Agreement establishes the basis for considering the effects of FHWA undertakings on historic properties, as defined in Attachment 2, and establishes alternative procedures to implement Section 106 for the review of such undertakings by the signatories and concurring parties, as specified.
- C. Guidance documents issued by ACHP shall be used in the interpretation of this Agreement, and in overall implementation of Section 106, to the extent they are applicable and helpful.
- D. For any matter regarding Section 106 compliance not addressed in this Agreement, the provisions of 36 CFR Part 800 shall apply.

## II. Legal Authorities, Standards, Guidelines, and Definitions

- A. Legal authorities, standards, and guidelines relevant to this PA and its purposes include:
  - 1. National Historic Preservation Act (54 USC § 300101 et seq.).
  - 2. Protection of Historic Properties, Advisory Council on Historic Preservation (36 CFR Part 800) or its successor regulation.
  - 3. Secretary of the Interior's Standards for the Treatment of Historic Properties, July 1997, U.S. Department of the Interior, National Park Service (36 CFR 68) or its successor regulation.
  - 4. Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines, September 1983, United States Department of the Interior, National Park Service (48 Federal Register [FR] 44716 [1983], as updated) or its successor regulation.
  - 5. Secretary of the Interior's Professional Qualification Standards at 48 FR 44716 (1983), as updated.
  - 6. National Register of Historic Places (36 CFR Part 60) or its successor regulation.
  - 7. Procedures for State, Tribal, and Local Government Historic Preservation Programs (36 CFR Part 61) or its successor regulation.
  - 8. Secretary of the Interior's Standards for Curation of Archeological Materials (36 CFR Part 79) or its successor regulation.
  - 9. National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation (Revised 1997).
  - 10. National Register Bulletin 38: Guidelines for Documenting and Evaluating Traditional Cultural Properties (1990), or its successor guidelines.
  - 11. Native American Graves Protection and Repatriation Act of 1990 (25 USC §§ 3001-3013) and its implementing regulations at 43 CFR Part 10, or its successor regulation.
  - 12. Archaeological Resources Protection Act of 1979 (16 USC § 470) and its implementing regulations at 43 CFR Part 7, or its successor regulation.
  - 13. Freedom of Information Act, Records and Testimony (43 CFR Part 2).
  - 14. Executive Order No. 13007: Indian Sacred Sites (1996).

15. Executive Order No. 13175: Consultation and Coordination with Indian Tribal Governments (2000).
16. Arizona Antiquities Act (ARS §§ 41-841 through 41-844 and its implementing rules, and ARS § 41-865 and its implementing rules).
17. The Arizona State Museum Archaeological Site Recording Manual (December 1, 1993), or its successor guidelines.
18. State Historic Preservation Act of 1982 (ARS §§ 41-861 through 41-864).
19. Standards for Inventory Documents Submitted for SHPO Review in Compliance with Historic Preservation Laws (SHPO Survey Report Standards), January, 2015 or its successor guidelines.
20. Regulations on the confidentiality of information relating to location of archaeological discoveries and places or objects included or eligible for inclusion on the Arizona Register of Historic Places (ARS § 39-125).

B. For the purposes of this Agreement, the definitions provided in Attachment 2 shall apply.

### III. Responsibilities of FHWA and ADOT

#### A. FHWA Responsibilities

1. FHWA is legally responsible for ensuring that the Program in Arizona complies with Section 106 for all undertakings with the potential to affect historic properties, and therefore, no approval for construction of a Program-funded undertaking will be made by FHWA until the completion of Section 106 and any pre-construction mitigation measures agreed to during consultation.
2. In compliance with its responsibilities under Section 106, and as a condition of its award to ADOT of any assistance under the Program, FHWA will ensure that ADOT carries out the responsibilities it is assigned under this Agreement.
3. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with federally recognized Tribes.
4. As the responsible federal agency, FHWA shall conduct all formal consultation with ACHP in accordance with 36 CFR Part 800.

#### B. ADOT Responsibilities

1. ADOT shall assist FHWA in carrying out the following steps with respect to undertakings covered by this Agreement.

- a. Establish whether there is an undertaking with the potential to affect historic properties.
  - b. Conduct inventories and identify historic properties, as needed.
  - c. Identify and solicit input from consulting parties.
  - d. Conduct public involvement activities.
  - e. Establish the area of potential effects (APE).
  - f. Determine the National Register eligibility of properties within the APE.
  - g. Assess the effects of the undertaking.
2. ADOT shall define each undertaking in sufficient detail so that Section 106 review can be conducted. Section 106 review should begin at the earliest stages of scoping or design.
3. ADOT will compile a report of Section 106 compliance actions necessary for quarterly and annual reports as required under Stipulations XIX.B and XIX.C.
4. ADOT will assist FHWA in identifying any party entitled to be consulted on an undertaking, including federal and state agencies, local governments, and Tribes, whereupon, FHWA will invite these parties to participate as consulting parties.
5. ADOT will assist FHWA in making a reasonable and good faith effort to identify any Tribe that might attach religious and cultural significance to historic properties in the APE, whereupon, FHWA will invite that Tribe to participate as a consulting party to the undertaking.
6. ADOT shall curate archaeological materials produced under this Agreement at the ASM or another facility meeting the standards of 36 CFR Part 79, and shall consult with Tribes and other consulting parties to an undertaking regarding the appropriate repository for a given collection.

#### IV. Professional Qualification Standards, Permitting Requirements, and Training

##### A. Qualification Standards:

1. ADOT shall employ staff with professional training and experience in prehistoric or historic archaeology, historic architecture, or architectural history who either meet the Professional Qualifications Standards established by the Secretary of the Interior (SOI), or who work under the supervision of a professional that meets the SOI qualifications standards (48 FR 44716, Sept. 1983, as updated). ADOT staff who possess professional training and experience, as described, are referred to in this Agreement as Cultural Resources Professionals (CRP). All work performed by ADOT under the terms of this Agreement shall be conducted by an ADOT CRP. The

ADOT CRP may seek advice or technical assistance from SHPO at any time on any undertaking.

2. Consultant CRPs with subject matter expertise in prehistoric or historic archaeology, architecture or architectural history, may assist ADOT staff whenever undertakings are reviewed that involve types of cultural resources in their areas of expertise.
3. Section 106 documentation may be prepared by consultant CRPs who meet the SOI's Professional Qualifications Standards, or who work under the supervision of a professional who meets the SOI's Professional Qualifications Standards. Consultant responsibilities do not include formally approving Section 106 documents on behalf of ADOT, making official agency determinations or findings, signing consultation letters, or otherwise functioning as an agency official for the purposes of Section 106.
4. All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of cultural resources, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by CRPs who meet, or work under the direct supervision of a person or persons who meets the SOI's Professional Qualifications Standards for Archaeology, Historic Architecture, Architectural History, or History, as appropriate (48 FR 44716, Sept. 1983, as updated).

#### B. Permitting Requirements

1. Archaeological investigations on state land will be conducted in accordance with a permit issued by the Director of ASM pursuant to ARS § 41-842 of the Arizona Antiquities Act.
2. Archaeological investigations on federal land will be conducted in accordance with a permit issued by the federal land managing agency pursuant to the Archaeological Resources Protection Act (ARPA) in compliance with 43 CFR Part 7, when applicable.
3. Cultural resources investigations on Tribal lands will be conducted in accordance with permits or other approvals issued by the appropriate Signatory Tribe under Tribal law or policy, when such law or policy exists.

#### C. Training

1. ADOT, with the assistance of FHWA and SHPO, will provide training for ADOT personnel and ADOT consultants regarding implementation of this Agreement.

2. ADOT will prepare a handbook to accompany this Agreement, which will include internal procedures, forms, letter templates, flow charts, and other information ADOT determines is necessary to ensure efficient compliance with the terms of this Agreement. The handbook will be used as part of the training.
3. ADOT, with the assistance of FHWA and SHPO, will provide training on Section 106, Section 4(f) of the United States Department of Transportation Act (Section 4(f)), and the National Environmental Policy Act (NEPA), to ADOT CRPs, and consultant CRPs, as needed, subject to funding availability.
4. ADOT, in coordination with SHPO and FHWA, will work with its consultants and LPA staff and consultants working on LPA projects to identify areas where training can improve performance under this Agreement and will work to make such training available, subject to funding availability.
5. Whenever major changes to 36 CFR Part 800 become effective, ADOT CRPs will participate in training on the new regulations within six months of new regulations taking effect.

#### V. Consultation with Indian Tribes

- A. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with the Tribes pursuant to Section 106. FHWA shall consult with the Tribes on a government-to-government basis regarding undertakings covered by this Agreement. FHWA shall consult with:
  1. Signatory Tribes for Program-funded projects on and off their Tribal lands in accordance with Stipulations X, XI, and XII, as further described below.
  2. Tribes that are concurring parties to this Agreement for Program-funded projects off their Tribal lands in accordance with Stipulations X, XI, and XII.
  3. Tribes that are not signatories or concurring parties to this Agreement in accordance with 36 CFR Part 800, or by means of a separate tribe-specific PA with FHWA that meets the requirements of 36 CFR Part 800.
- B. FHWA will formally initiate consultation with the Tribes in writing. FHWA may ask ADOT to assist in continuing consultation for an undertaking if individual Tribes reach written agreement with FHWA and ADOT for this purpose. If the Tribe does not agree, FHWA shall conduct all consultation for an undertaking.

- C. Any Tribes that might attach religious and cultural significance to historic properties in the APE shall be identified by ADOT and invited by FHWA to be consulting parties for a given undertaking.
- D. Where the Tribe has a National Park Service certified THPO, FHWA shall consult with the THPO. Where the Tribe does not have a THPO, FHWA shall consult with the Tribe and SHPO.
- E. Whenever feasible, FHWA or ADOT will consult with the Tribes during transportation planning to identify Tribal concerns regarding historic preservation related issues prior to the initiation of Section 106.
- F. For all Signatory Tribes, when a Program-funded undertaking is on land owned by a Tribe, FHWA will consult with the Tribe on all decisions that relate to the following stipulations in this Agreement:
  - Screened undertakings exempted from further review (Stipulation X.C.1).
  - Findings of No Historic Properties Affected (Stipulation X.F.1.a).
  - Findings of No Adverse Effect with Standard Conditions (Stipulation X.F.2.a.i).
  - Changes in Scope of Project (Stipulation XI.A.4).
  - Preconstruction Geotechnical Testing (Stipulation XII.A.1).

These stipulations do not generally require individual consultation but are instead addressed through batched consultation in a quarterly report (see Stipulation XIX.B). The purpose of consulting with a Signatory Tribe for these undertakings when the undertaking is on that Tribe's land is to ensure the Signatory Tribe is informed and has no objections prior to FHWA and ADOT carrying out the stipulation. When acceptable to the Signatory Tribe, this consultation may be delegated to the ADOT CRP and may occur informally through emails and telephone calls. If the informal process is not acceptable to the Signatory Tribe, FHWA will formally consult with the Tribe, and the Tribe will have 15 calendar days to respond. If there is no response within that time period, FHWA will follow the consultation procedures in Stipulation X.A.1.

## VI. Consultation with Federal and State Agencies

- A. When a Program-funded undertaking is on land owned or managed by a federal or state agency FHWA, with ADOT's assistance, will consult with the appropriate agency throughout the Section 106 process in accordance with Stipulations X, XI and XII.
- B. In addition, ADOT, on behalf of FHWA, will coordinate with the federal or state land managing agency on all decisions relating to the stipulations listed below, which are addressed through batched consultation in a quarterly report (see Stipulation XIX.B). The purpose of this coordination is to ensure the agency is informed and in agreement prior to

FHWA and ADOT carrying out the stipulation. Communication may occur informally through emails and telephone calls, and will be documented to the project file.

- Screened undertakings exempted from further review (Stipulation X.C.1).
- Findings of No Historic Properties Affected (Stipulation X.F.1.a).
- Findings of No Adverse Effect with Standard Conditions (Stipulation X.F.2.a.i).
- Changes in Scope of Project (Stipulation XI.A.4).
- Preconstruction Geotechnical Testing (Stipulation XII.A.1).

C. When Program-funded transportation projects cross dams, canals, laterals, ditches or associated facilities covered by the Reclamation PAs presented in Attachment 1, FHWA will coordinate with Reclamation and SRP on a project-specific basis to determine whether it is appropriate for FHWA to adopt stipulations of the applicable Reclamation PA in order to avoid or resolve adverse effects to facilities covered by the Reclamation PA. If FHWA adopts those stipulations of an applicable PA, implementation of those stipulations will satisfy FHWA's Section 106 responsibilities for the undertaking in regard to those facilities. FHWA shall notify consulting parties to the undertaking of this decision.

## VII. Participation of Other Consulting Parties and the Public

### A. Consulting Parties:

1. Parties that are entitled to be consulted on the undertaking, as described in 36 CFR § 800.2(c), shall be invited to participate by FHWA. Any land-managing agency whose land may be included in a Program-funded undertaking shall be invited by FHWA to participate in the Section 106 process. Other individuals and organizations with a demonstrated interest in the undertaking may also participate as consulting parties.
2. FHWA shall invite any LPAs, including Certified Local Governments, (CLGs), that are applicants for federal assistance or approvals, to be consulting parties under 36 CFR § 800.2(c).
3. FHWA shall consider all written requests of individuals and organizations to participate as consulting parties. FHWA will respond to all written requests within 15 calendar days. FHWA will determine which should be consulting parties to the undertaking, and will consult with ADOT and SHPO, or THPO, as applicable, prior to denying consulting party status to any party requesting such status.

### B. Public Involvement:

1. As part of ADOT's public participation process, the views of the public will be considered in a manner that reflects the nature and complexity of the undertaking and

its potential effects on historic properties, the likely interest of the public in the effects on historic properties, and confidentiality concerns of the Tribes and private individuals, as provided for under 36 CFR § 800.2(d).

2. FHWA, with ADOT's assistance, will ensure that issues relating to cultural resources, as defined in Attachment 2, are incorporated into ADOT's public participation process carried out under NEPA as far as practicable.
3. FHWA may use its NEPA scoping process, including but not limited to, hearings, meetings, and letters to inform the public about a proposed undertaking and request comments. When exercising this option, FHWA will make it clear to the public that comments are being requested pursuant to Section 106.

#### VIII. Coordination of Section 106 with NEPA and Section 4(f):

- A. FHWA will ensure that the steps in the Section 106 process, as described in Stipulation X below, are coordinated with planning and reviews conducted under NEPA, in accordance with 36 CFR § 800.8(a). To assist in coordination, FHWA may consult Section IV of the ACHP's *NEPA and NHPA Handbook for Integrating NEPA and Section 106* (March 2013). An ADOT CRP will be involved throughout the entire environmental review process.
- B. FHWA will also ensure that the steps in the Section 106 process are coordinated with Section 4(f), in accordance with 36 CFR § 800.3(b). An ADOT CRP will participate in the identification of properties considered under Section 4(f) and review of project alternatives.

#### IX. Actions not Subject to Section 106 Review

FHWA, ADOT and SHPO agree that approval of commercial material sources for Program-funded projects is a state action not subject to Section 106 review. ADOT will meet the requirements of the Arizona Antiquities Act (ARS §§ 41-841 through 41-844), ARS § 41-865, and the State Historic Preservation Act (ARS §§ 41-861 through 41-864) for the approval of commercial material sources that are used for Program projects. ADOT will ensure that the conditions of ADOT Stored Specifications 104ENVR (03/17/08) and 101MATL (12/14/09) are met, and ADOT will consult with SHPO and the Tribes, and land managing agencies, if appropriate, before approving the use of any commercial material sources on Program-funded projects.

## X. Section 106 Process

### A. Consultation

1. All consultation among FHWA or ADOT, and SHPO or THPO, as applicable; federal and state land managing agencies; Tribes; and other consulting parties to an undertaking will be conducted within the review periods stipulated below. If by the end of the review period, FHWA does not receive comments from one or more of the consulting parties to the undertaking, ADOT, on FHWA's behalf, will follow-up with the party to verify that the party has no comment. If, after a reasonable and good faith effort to reach an unresponsive consulting party, there has still been no response, FHWA will assume the party has no comment and will proceed to the next step prescribed by this Agreement.
2. If any agency or Tribe requires additional time for consultation, FHWA and ADOT will accommodate the request whenever possible provided that the request for an extension is made within the original review period. The ADOT CRP will document the request for additional consultation time to the project file.
3. For a given undertaking, FHWA, with ADOT's assistance, may, when warranted, expedite consultation through addressing multiple steps in the Section 106 process, as presented in this Stipulation, in accordance with 36 CFR § 800.3(g). These steps include, but are not limited to, consultation on the APE, identification of historic properties, National Register evaluations, and findings of effect for the undertaking. FHWA will ensure that SHPO or THPO, as applicable, and any other consulting parties have an adequate opportunity to express their views.

### B. Initiation of the Section 106 Process

1. ADOT will be responsible for establishing the undertaking and initiating the Section 106 review process. An ADOT CRP will determine if the undertaking has the potential to cause effects to historic properties. Where the ADOT CRP determines there is no potential to cause effects pursuant to 36 CFR § 800.3(a)(1), FHWA will have no further Section 106 obligation and ADOT shall document this finding to the project file. Where the ADOT CRP determines the undertaking does have potential to affect historic properties, the undertaking will be reviewed in accordance with Stipulations X.C through X.G below.

### C. Screened Undertakings Exempted from Further Review

1. The undertakings classified in Attachment 3 (Screened Undertakings Exempted from Further Review) will require no further review under this Agreement when the requirements of Attachment 3 have been satisfactorily completed and it is determined

by an ADOT CRP that no historic properties will be affected by the undertaking. ADOT shall document all undertakings exempted from further review in the quarterly report, as required under Stipulation XIX.B.

2. All exempted undertakings shall be screened by an ADOT CRP in accordance with the procedures described in Attachment 3. Any undertaking that is not listed in Attachment 3, and does not meet the conditions for review as an exempted undertaking, will be reviewed through the Section 106 process as described below in Stipulation X.D-G.
3. ADOT, in consultation with FHWA, SHPO, and the other signatories and concurring parties to this Agreement, may propose additions to the list of exempted undertakings in Attachment 3, as needed. ADOT will justify the addition in writing to the other signatories and concurring parties to this Agreement, explaining how the undertaking will not cause effects to historic properties, provided all conditions are met. Where FHWA and SHPO approve, and none of the other signatories and concurring parties object, the proposed exempted undertaking will be added to Attachment 3 without formal amendment to this Agreement under Stipulation XXIII. ADOT will update Attachment 3 and provide copies to FHWA, SHPO, and the other signatories and concurring parties to this Agreement. Where either FHWA or SHPO does not approve, the proposed exempted undertaking will not be added to Attachment 3. Any additions to Attachment 3 will be reported on in the annual report prepared in accordance with Stipulation XIX.C.

#### D. Identification of Historic Properties

1. An ADOT CRP shall determine and document the APE for undertakings covered by this Agreement in accordance with Attachment 4 (Defining the Area of Potential Effects). In establishing the APE, both the direct and indirect effects shall be considered. At any time, ADOT may communicate with SHPO or other consulting parties to the undertaking on determining and documenting an APE.
2. ADOT shall identify the consulting parties to the undertaking and FHWA will invite them to participate in the Section 106 review in accordance with 36 CFR § 800.2(c) and 36 CFR §§ 800.3(c) through (f). An ADOT CRP will prepare or oversee preparation of invitation letters to the consulting parties. FHWA will review the invitation letters and send out the letters on FHWA letterhead upon approval.
3. ADOT, on behalf of FHWA, shall identify historic properties that may be located within an undertaking's APE in accordance with 36 CFR §§ 800.4(a)(2) through (4) and 36 CFR § 800.4(b). An ADOT CRP will determine whether a new survey is appropriate. If a survey is required, ADOT will arrange for a survey to be conducted by a professional meeting the applicable qualification standards in Stipulation IV.

4. If a new survey identifies cultural resources within the APE, FHWA, with ADOT's assistance, will ensure that a survey report meeting current SHPO and ASM reporting standards is prepared. FHWA, or ADOT on behalf of FHWA, will submit the survey report to the consulting parties for a 30 calendar day review, along with National Register eligibility determinations, in accordance with Stipulation X.E.
5. If a new survey is conducted and no cultural resources are identified within the APE, FHWA, with ADOT's assistance, will ensure that a survey report meeting current SHPO and ASM reporting standards is prepared documenting the negative findings. If the survey was conducted on Tribal or federal land, FHWA or ADOT will consult the appropriate Signatory Tribe or agency regarding the adequacy of the report. Once the report is found adequate by ADOT and the land owner, if any, FHWA shall issue a finding of No Historic Properties Affected, in accordance with Stipulation X.F.1. No further consultation will be required.
6. Identification of historic properties shall be consistent with the SOI's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44720-26). If the Program-funded undertaking is on land owned or managed by a federal or state land managing agency or Signatory Tribe, FHWA shall also follow applicable guidelines or protocols for identifying historic properties issued by the agency or Tribe.
7. FHWA, with ADOT's assistance, shall make a reasonable and good faith effort to identify and consult with any affected Tribe to assist in identifying properties to which the Tribe may attach religious and cultural significance that may be within the APE, and shall identify any such properties in accordance with 36 CFR § 800.4(b).

E. Evaluation of National Register Eligibility

1. ADOT, on behalf of FHWA, shall evaluate the historic significance of identified cultural resources in accordance with 36 CFR § 800.4(c)(1) following National Register Bulletins 15 and 38. An ADOT CRP will make the National Register evaluation. In making this evaluation, ADOT will consult with the appropriate land managing agency or Signatory Tribe when a Program funded undertaking is on land under their respective jurisdiction, and will provide the land managing agency or Signatory Tribe with a recommendation on National Register eligibility for their concurrence.
2. During the evaluation process, FHWA, with ADOT's assistance, shall make a reasonable and good faith effort to identify and consult with the Tribes on the evaluation of any identified cultural resource to which they may attach religious or cultural significance.

3. When previously evaluated cultural resources are identified within an undertaking's APE, an ADOT CRP shall review those previous evaluations to assess whether the previous evaluations are still valid. Such review may require a field visit, and field visits may be made by consultant CRPs on behalf of ADOT. If the previous evaluations are not valid, the ADOT CRP will recommend FHWA seek formal re-evaluation and consult with the appropriate land managing agency or Signatory Tribe when a Program funded undertaking is on land under their respective jurisdiction, and with all other consulting parties on a revised determination of eligibility.
4. FHWA, with ADOT's assistance, shall submit determinations of National Register eligibility and supporting documentation to the consulting parties to the undertaking for review in accordance with 36 CFR § 800.4(c)(2). The consulting parties will have 15 calendar days to submit their comments to FHWA.
5. If FHWA, SHPO or THPO, as applicable, and the other consulting parties to the undertaking agree regarding FHWA's National Register eligibility determinations, FHWA may proceed to the next step in this Agreement. If FHWA and one or more of the consulting parties to the undertaking do not agree, and the disagreement cannot be resolved, FHWA will request formal determination from the Keeper of the National Register in accordance with 36 CFR § 800.4(c)(2). The Keeper's determination on National Register eligibility will be final.

#### F. Assessment of Effects

An ADOT CRP will make recommendations of effects for FHWA's consideration. In making its finding of effect, as follows, FHWA, with ADOT's assistance, shall consider the direct, indirect and cumulative effects of the undertaking to historic properties, as well as any economic impact that may adversely affect historic properties.

##### 1. Finding of No Historic Properties Affected

- a. For all those undertakings not screened and exempted under Attachment 3, if FHWA, with ADOT's assistance, determines that either there are no historic properties within the APE, or historic properties are present but will not be affected by the undertaking, FHWA shall issue a finding of No Historic Properties Affected pursuant to 36 CFR § 800.4(d)(1). An ADOT CRP will recommend the effects finding for FHWA's consideration. At the time of the finding, an ADOT CRP will document the finding for the quarterly report, as required under Stipulation XIX.B.

- b. If FHWA finds there are historic properties that may be affected by the undertaking under 36 CFR § 800.4(d)(2), FHWA shall make a finding of effect in accordance with Stipulation X.F.2 or Stipulation X.F.3, as applicable.
2. Finding of No Adverse Effect

For those undertakings where historic properties may be affected, FHWA, with ADOT's assistance, shall apply the Criteria of Adverse Effect in accordance with 36 CFR § 800.5(a). If the effect of the undertaking will not be adverse, FHWA will issue a finding of No Adverse Effect in accordance with 36 CFR § 800.5(b) and an ADOT CRP will document the finding. FHWA may make a finding of No Adverse Effect in one of two ways, as presented below.

a. No Adverse Effect with Standard Conditions

FHWA, with ADOT's assistance, may make a finding of No Adverse Effect with Standard Conditions when the standard conditions for avoidance presented in Attachment 5 (No Adverse Effect with Standard Conditions) to this Agreement are met. Following any consultation with Signatory Tribes or federal or state land managing agencies, as set forth in Stipulations V and VI, the undertaking shall not be subject to further review under this Agreement.

- i. ADOT, on behalf of FHWA, shall document each undertaking in which a finding of No Adverse Effect with Standard Conditions is made in the quarterly report, as required under Stipulation XIX.B.
- ii. FHWA, with ADOT's assistance, in consultation with SHPO and the other signatories and concurring parties to this Agreement, may propose the adoption of additional standard conditions that have proven effective in avoiding adverse effects to historic properties. FHWA and ADOT shall provide documentation supporting the proven effectiveness to SHPO or THPO, as applicable, and the other signatories and concurring parties for review. Where FHWA, ADOT, and SHPO or THPO, as applicable, approve, and no other parties object, the proposed standard condition will be added to Attachment 5 without formal amendment to this Agreement under Stipulation XXIII. ADOT will update Attachment 5 and provide copies to FHWA, SHPO and the other signatories and concurring parties to this Agreement. Where SHPO or THPO, as applicable, does not approve, the proposed standard condition will not be added to Attachment 5.

b. No Adverse Effect

When the standard conditions in Attachment 5 do not apply, FHWA, with ADOT's assistance, will propose a finding of No Adverse Effect and will consult with SHPO or THPO, as applicable; land managing agencies; Tribes; and the

other consulting parties to the undertaking pursuant to 36 CFR § 800.5(c). FHWA shall request that any comments be directed to ADOT or FHWA as appropriate, within 15 calendar days of receipt of consultation.

### 3. Finding of Adverse Effect

If FHWA, with ADOT's assistance, determines that the criteria of adverse effect in 36 CFR § 800.5(a)(1) are met, it will issue a finding of Adverse Effect and consult further to resolve the adverse effect in accordance with Stipulation X.G. An ADOT CRP will make the recommendation on a finding of Adverse Effect for FHWA's consideration. In making this recommendation, ADOT will consult with the appropriate land managing agency or Signatory Tribe when a Program funded undertaking is on land under their respective jurisdiction.

## G. Resolution of Adverse Effects

### 1. Standard Measures for Resolving Adverse Effects

- a. FHWA may resolve adverse effects to certain types of historic properties by following the process in Attachment 6 (Standard Measures for Resolving Adverse Effects) as an alternative to preparing a Memorandum of Agreement (MOA) or project-specific PA. An ADOT CRP will make the recommendation for resolving adverse effects through standard measures for FHWA's consideration. FHWA will not be required to notify ACHP of a finding of adverse effect should standard measures for resolving adverse effects be followed.
- b. FHWA will propose the applicable standard measure for resolving adverse effects, as provided in Attachment 6, and request comments from SHPO or THPO, as applicable, and the consulting parties to the undertaking. FHWA will provide the SHPO or THPO and the consulting parties to the undertaking with information on the undertaking, each property and its significance, the adverse effect to the property, and a justification for resolving adverse effects, as proposed, under Attachment 6 to this Agreement.
- c. Where FHWA and SHPO or THPO, as applicable, agree in writing that resolving adverse effects under Attachment 6, as proposed, is warranted, and any party that is a land manager or permitting agency with a role in authorizing the undertaking concurs in writing, the Section 106 process is completed, and FHWA will ensure that either a Historic Properties Treatment Plan (HPTP) or a Historic American Building Survey/Historic American Engineering Record (HABS/HAER) Documentation Plan (HABS/HAER Plan) for resolving the adverse effects is prepared in accordance with Attachment 6. Where there is no agreement among FHWA, SHPO or THPO, as applicable, or any party that is a land managing or

permitting agency with a role in authorizing the undertaking, FHWA will initiate consultation to prepare an MOA or project-specific PA following Stipulation X.G.2.

- d. Any consulting party to the undertaking may object to FHWA regarding the proposal to resolve the adverse effects of the undertaking through standard measures. FHWA, in consultation with SHPO or THPO, as applicable, and the land manager or permitting agency, if any, will consider the objection in determining if resolving the adverse effect of the undertaking under Attachment 6 is warranted. Should FHWA determine that resolving the adverse effects of the undertaking under Attachment 6 is not warranted, then FHWA will prepare a MOA or project-specific PA, in accordance with Stipulation X.G.2.
- e. FHWA shall provide draft copies of the HPTP or HABS/HAER Plan to SHPO or THPO, as applicable, and the other consulting parties to the undertaking for review and comment. The consulting parties will have 30 calendar days to provide comments on the HPTP or HABS/HAER Plan. If comments received require only minor editorial corrections, such as typos, formatting, and punctuation, FHWA, with ADOT's assistance, will complete the HPTP or HABS/HAER Plan. If more substantive changes are required, FHWA, with ADOT's assistance, shall provide draft copies of the revised HPTP or HABS/HAER Plan to all consulting parties to the undertaking for review and comment. The consulting parties will have 20 calendar days to provide comments on any revised drafts. FHWA, in consultation with the consulting parties to the undertaking, may modify review periods depending on the nature and complexity of the proposed treatment. FHWA will consider the comments of any party that responds within the review period(s) in completing the HPTP or HABS/HAER Plan. When the document is completed to the satisfaction of FHWA, FHWA, with ADOT's assistance, will provide copies of the completed HPTP or HABS/HAER Plan to all consulting parties.
- f. The results of all standard measures for resolving adverse effects will be reported. FHWA, with ADOT's assistance, will ensure that a preliminary report of findings is completed at the end of field work and will submit the report to all consulting parties to the undertaking for review and comment. The specific requirements for the preliminary report of findings, as well as the review process and time frames will be stipulated in the HPTP or HABS/HAER Plan. FHWA will not authorize the start of construction until consultation on the preliminary report of findings has been satisfactorily completed.
- g. ADOT and FHWA may propose an in-field meeting to be held at the end of field work during which the results of the field work will be presented to the consulting parties. FHWA may authorize start of construction if the consulting parties

attending the in-field meeting agree that the HPTP was adequately implemented and no additional field work is needed. SHPO or THPO, as applicable, and any land managing agency or Tribe with jurisdiction must also concur. FHWA will ensure that a summary of the in-field meeting and any decisions made at the meeting are included in the preliminary report of the findings required under X.G.1.f.

- h. FHWA, with ADOT's assistance, will ensure that a draft treatment report or HABS/HAER document is prepared, and will submit the draft report to all consulting parties to the undertaking for review and comment. The review process will follow the same process as in Stipulation X.G.1.e above.
- 2. Memorandum of Agreement or Project-Specific Programmatic Agreement
  - a. When FHWA determines resolution of adverse effect under Attachment 6 is not warranted, or is not agreed to, FHWA will, in consultation with the consulting parties to the undertaking, prepare an MOA in accordance with 36 CFR § 800.6, or a project-specific PA in accordance with 36 CFR § 800.14(b). An ADOT CRP will make the recommendation for an MOA or project-specific PA to FHWA. FHWA shall invite ACHP to participate, if not already participating in the Program-funded project. The process for preparing and reviewing the MOA or project-specific PA will be negotiated among the consulting parties to the undertaking.
  - b. If an MOA or project-specific PA is prepared, once executed, a copy shall be provided to each signatory and concurring party, and the MOA or PA will be filed with the ACHP and the consulting parties, per 36 CFR § 800.6, along with the documentation specified in 36 CFR § 800.11(f). This completes the Section 106 process. The measures to resolve adverse effects shall then be incorporated into the undertaking, and the undertaking may be implemented.

#### XI. Changes in Scope of Project:

- A. Whenever the scope of a project is revised (e.g., design changes, utility relocation, addition of geotechnical investigations, or addition of new ROW), including during construction, an ADOT CRP will determine whether or not the changes require modifying the APE or revising the project effect and inform the ADOT project manager and Environmental Planner.
  - 1. If the changes do not require modifying the APE or finding of effect, then no further consultation will be required.

2. If the changes do require modifying the APE, the ADOT CRP will determine whether a new survey is warranted in consultation with the appropriate land managing agency or Tribe, and if so, will arrange for a survey to be conducted, following the procedures in Stipulation X.D.
  3. If the changes do require modifying the APE, but the ADOT CRP has reason to believe that inventory of the area within the modified APE is unwarranted, the ADOT CRP will notify FHWA, and SHPO or THPO, as applicable, and the federal or state land managing agency or Signatory Tribe with jurisdiction, if any, to provide an explanation for ADOT's position. Should any one of these parties object within 15 calendar days, ADOT will follow Stipulation X.D through X.G, as needed.
  4. If the changes do require modifying the APE, and no additional cultural resources are identified within the new APE, and the scope revision will not alter the findings of effect for the undertaking, then ADOT will document its finding for the project file and notify FHWA. No additional consultation will be required. ADOT will include its finding in the quarterly report as provided for in Stipulation XIX.B.
  5. If the changes do require modifying the APE, and additional cultural resources are identified within the new APE, and the findings of effect for the undertaking may be altered, then FHWA, with ADOT's assistance, will make the revisions commensurate with the nature and scope of the changed potential effects and follow the review and consultation process in Stipulation X, as applicable.
- B. FHWA, with ADOT's assistance, shall ensure that it meets the requirements of this Agreement to identify historic properties, evaluate potential effects, and resolve any adverse effects that may result from the changes in project scope and ensure that any supplemental investigations that may be required will be completed prior to the start of construction, or continuance of construction, within the area affected by the scope change.

## XII. Preconstruction Geotechnical Testing

- A. Preconstruction Geotechnical Testing is a necessary component to the engineering of safe roadways, but may affect historic properties when undertaken within the boundaries of prehistoric and historic archaeological sites and traditional cultural properties (TCPs) that are listed in or eligible for listing in the National Register. FHWA, with ADOT's assistance, will follow the procedures below for geotechnical testing.
1. In cases where an ADOT CRP has determined that geotechnical investigations will be limited to areas that are previously disturbed as defined in Attachment 2, or in areas that have been previously surveyed with negative results, the action is exempted from additional review in accordance with Attachment 3. ADOT shall document all

undertakings exempted from further review in the quarterly report, as required under Stipulation XIX.B.

2. In cases where an ADOT CRP finds that the proposed geotechnical testing will have no effect to historic properties, in accordance with Stipulation X.F.1, ADOT will carry out the undertaking.
  3. When an ADOT CRP finds that the undertaking will have no adverse effect, ADOT will follow the provisions of Stipulation X.F.2. If a finding of No Adverse Effect with Standard Condition is recommended, ADOT will prepare the necessary Action Plan for the geotechnical testing in accordance with Attachment 6.
  4. If an ADOT CRP finds the geotechnical testing may result in an adverse effect, in accordance with Stipulation X.F.3, FHWA, with ADOT's assistance, will consult with SHPO or THPO, as applicable; land managing agencies; Tribes; and other appropriate consulting parties to the undertaking on resolving the adverse effects in one of the following ways:
    - a. Carry out one or more treatments specified in a programmatic treatment plan. ADOT will develop a programmatic treatment plan for geotechnical testing in consultation with the signatories and concurring parties, which, upon approval, will be incorporated by reference in this Agreement. FHWA will consult with all the consulting parties to the undertaking regarding the implementation of the programmatic treatment plan for a given undertaking. If SHPO or THPO, as applicable, and any land owner or manager agrees, and no other parties object to FHWA's proposed implementation of the programmatic geotechnical treatment plan, it will be implemented. FHWA will not be required to notify ACHP of an adverse effect or prepare an MOA prior to implementing the programmatic geotechnical treatment plan.
    - b. Until the programmatic geotechnical treatment plan is completed and approved, FHWA shall resolve the adverse effect in accordance with Stipulation X.G above.
- B. Geotechnical testing is conducted prior to road construction in order to collect data needed for design purposes. As such, consultation for geotechnical testing may occur before formal consultation on the undertaking or as the initial consultation on the undertaking.

### XIII. Protocol for Installing or Replacing Fencing and Signage

Installing or replacing fencing and signage within road ROWs is a common undertaking either as a separate task or as part of larger transportation projects. Where Program-funded undertakings involving the installation or replacement of fencing and signage occur outside the recorded limits

of archaeological sites, FHWA, with ADOT's assistance, will follow the provisions of Stipulation X.F.1. In the event that Program-funded undertakings involving the installation or replacement of fencing and signage occur adjacent or within the limits of National Register eligible archaeological sites, FHWA, with ADOT's assistance, shall follow the protocol in Attachment 7 (Protocol for Installing or Replacing Fencing and Signage). If the fencing or signage project does not meet the conditions in Attachment 7, then FHWA, with ADOT's assistance, will review the project in accordance with Stipulation X.

#### XIV. Protocol for Recreational Trails Program Undertakings

FHWA provides Program funding to the states for developing and maintaining recreational trails and trail-related facilities through the RTP. The RTP is funded through the Program. In Arizona, the RTP is administered by ASP. ADOT provides ASP with environmental and cultural resource review of RTP projects under NEPA and Section 106, in consultation with SHPO. FHWA, with ADOT's assistance, will ensure that the Section 106 requirements for RTP projects are met in accordance with the protocol in Attachment 8 (Protocol for Recreational Trails Program Undertakings) and Stipulation X.

#### XV. Local Public Agency Projects

- A. FHWA provides financial assistance to the states for LPA transportation projects. *The Stewardship and Oversight Agreement on Project Assumption and Program Oversight by and between the Federal Highway Administration Arizona Division and the Arizona Department of Transportation* (April 9, 2015) states that Title 23 USC does not recognize local entities as direct recipients of federal funds; therefore, ADOT is responsible and accountable for ensuring that federal-aid requirements are met on all LPA projects.
- B. The ADOT Environmental Planning Group (EPG) is responsible for providing guidance for the preparation of environmental documents for federal-aid projects in compliance with NEPA and other environmental laws, including Section 106.
- C. ADOT EPG oversees the environmental review process and is responsible for ensuring that the process is applied correctly to LPA projects, and for reviewing environmental documents to ensure that they comply with environmental requirements.
- D. FHWA, with ADOT's assistance, will ensure that the Section 106 requirements for LPA projects are met in accordance with the applicable provisions of Stipulation X of this Agreement.
- E. For LPA projects where FHWA has made a finding of No Adverse Effect or No Adverse Effects with Standard Conditions, FHWA or ADOT will consult with SHPO at the time that the finding is made and give SHPO the opportunity to request continuing consultation as design progresses. For projects with a finding of No Adverse Effects with

Standard Conditions, this consultation may be conducted informally through email or telephone calls and documented for the project file and the quarterly report as required under Stipulation XIX.B.

#### XVI. Post-Review Discoveries

- A. If cultural resources are encountered after the Section 106 review process in Stipulation X has been completed, ADOT shall require the person in charge of construction to immediately cease construction within a 50 foot radius of the discovery location, secure the discovery location against further disturbance and notify ADOT. ADOT shall notify FHWA and SHPO or THPO, as applicable, and the land manager or owner, if any.
- B. If the discovery is on state, county, or municipal land, ADOT shall also notify the Director of ASM per ARS § 41-844.
- C. If the discovery is an Isolated Occurrence (IO), the ADOT CRP shall recommend an appropriate course of action depending on the nature, context, and location of the IO. The ADOT CRP may consult informally with SHPO or THPO, as applicable, or with Tribes in making this decision. If the IO is found on land managed by a federal or state agency or Signatory Tribe, the ADOT CRP will notify the agency or Signatory Tribe and request input on the disposition of the IO and the continuance of construction in the vicinity of the discovery. Any cultural resource that does not meet the definition of an archaeological site in *The Arizona State Museum Archaeological Sites Recording Manual* (1993), or its successor document will be considered an IO for the purposes of this Agreement. When Program-funded undertakings are located on lands managed by a federal or state agency or on Tribal lands, ADOT will follow the applicable definitions of the agency or Signatory Tribe with jurisdiction.
- D. If the discovery is an archaeological site, ADOT shall ensure that a CRP meeting the qualification standards for archaeology in Stipulation IV inspects the discovery within 24 hours noting, where possible, its nature, age, extent, condition and National Register eligibility, if it has not been previously evaluated. If the discovery is on land owned or managed by a federal or state agency or by a Tribe, ADOT will follow the landowner's definition of a site; otherwise, the ASM definition of a site will be followed in implementing this stipulation. ADOT will electronically submit an inspection summary to FHWA, SHPO or THPO, as applicable; the federal or state land manager or owner; ASM, when warranted; and any Tribe that may attach religious and cultural significance to the discovery, along with a recommendation on National Register eligibility and a proposal for resolving any adverse effects, in accordance with 36 CFR § 800.13(b)(3). The reviewing parties will have two business days to provide comments. ADOT shall take into account all comments received within the review period.

- E. Where there is concurrence among the land managing agency or Signatory Tribe, if any, ADOT, FHWA, and SHPO or THPO, as applicable, ASM when warranted, and any Tribe that may attach religious and cultural significance to the discovery, that the discovery is not National Register eligible, ADOT will document this decision and resume construction at the discovery location and notify the parties of its actions.
- F. Where there is concurrence among the land managing agency or Signatory Tribe, if any, ADOT, FHWA, and SHPO or THPO, as applicable, ASM when warranted, and any Tribe that may attach religious and cultural significance to the discovery, that the discovery is National Register eligible, ADOT, on behalf of FHWA, will carry out its proposed actions to resolve the adverse effects. FHWA, or ADOT on behalf of FHWA, shall submit a report of the actions to FHWA, SHPO or THPO, the applicable land manager or Tribe, and ASM, when warranted, once the action is completed.
- G. Where there is a dispute regarding National Register eligibility among the land managing agency or Signatory Tribe, if any, ADOT, FHWA, and SHPO or THPO, as applicable, ASM when warranted, and any Tribe that may attach religious and cultural significance to the discovery, FHWA shall follow the procedures in Stipulation X.E.5. If the Keeper of the National Register determines the discovery is National Register eligible, FHWA shall follow Stipulation XVI.F. Alternatively, FHWA may treat the discovery as if it is National Register eligible and follow Stipulation XVI.F.
- H. If the post review discovery includes human remains, then FHWA, with ADOT's assistance, will follow Stipulation XVII.

## XVII. Treatment of Human Remains

### A. Treatment on Federal Lands

1. On federal land, if the discovery of human remains and/or cultural items as defined by the Native American Graves Protection and Repatriation Act (NAGPRA) is anticipated to be found during archaeological excavation or construction, FHWA, with ADOT's assistance, will assist the federal land managing agency to develop a Plan of Action (POA) in accordance with NAGPRA regulations 43 CFR § 10.3. If the federal land managing agency has an existing POA in effect, FHWA, with ADOT's assistance, will follow its consultation and treatment provisions, as appropriate. FHWA or ADOT will notify SHPO of the discovery.
2. If a NAGPRA POA is not in effect, and human remains and/or cultural items, as defined, are encountered on federal lands either through archaeological excavation or during construction, ADOT shall require the person in charge to immediately cease within a 100-foot-radius of the discovery, take steps to protect the discovery, and promptly report the discovery to ADOT and the federal land managing agency.

ADOT will immediately report the discovery to FHWA and SHPO. The federal land managing agency shall then follow the provisions for inadvertent discoveries in compliance with the NAGPRA regulations at 43 CFR § 10.4.

B. Treatment on Tribal Lands

1. On Tribal lands, if the discovery of human remains and/or cultural items, as defined under NAGPRA, is anticipated to be found during archaeological excavation or construction, FHWA, with ADOT's assistance, will assist the BIA and the Signatory Tribe in preparing a NAGPRA POA, if not already developed. Where a NAGPRA POA is in effect, FHWA, with ADOT's assistance, will follow its consultation and treatment provisions.
2. If a NAGPRA POA is not in effect, and human remains and/or cultural items, as defined under NAGPRA, are encountered on Tribal lands either through archaeological excavation or during construction, ADOT shall require the person in charge immediately cease within a 100-foot-radius of the discovery, take steps to protect the discovery, and promptly report the discovery to the Signatory Tribe and ADOT. ADOT will report the discovery to FHWA and BIA. ADOT will notify SHPO only if the Signatory Tribe does not have a THPO. FHWA, with ADOT's assistance, will follow the Signatory Tribe's laws regarding the disposition of human remains, or if such laws do not exist, will follow the provisions for inadvertent discovery in compliance with the NAGPRA regulations at 43 CFR § 10.4.

C. Treatment on State, County, Municipal and Private Lands

1. On state, county, or municipal land, if the discovery of human remains is anticipated to be found during archaeological excavation or construction, ADOT, on behalf of FHWA, shall ensure that the institution, firm, or consultant responsible for the work develops a Burial Agreement with ASM and thereafter adheres to the terms of that Burial Agreement in the event human remains, funerary objects, sacred ceremonial objects or objects of national or tribal patrimony are encountered during the investigation.
2. If human remains, funerary objects, sacred ceremonial objects or objects of national or tribal patrimony are discovered on state, county, or municipal lands, either through archaeological excavation or during construction, and no Burial Agreement is in place, ADOT shall require the person in charge to immediately cease within a 100-foot radius of the discovery, take steps to protect the discovery, and immediately notify ADOT. ADOT shall inform SHPO, FHWA and the Director of ASM and shall follow the requirements of ARS § 41-844. ADOT shall also notify the state agency or local government with jurisdiction, if any.

3. If human remains or funerary objects are discovered on private lands, ADOT shall require the person in charge of construction to immediately cease within a 100-foot-radius of the discovery, take steps to protect the discovery, and immediately notify ADOT. ADOT shall inform SHPO, FHWA, the Director of ASM and the landowner and shall follow the requirements of ARS § 41-865.

#### XVIII. Emergency Situations

- A. Pursuant to 36 CFR § 800.12(d), this stipulation applies only to undertakings that will be implemented within 30 calendar days *after* the disaster or emergency has been formally declared by the President, the Governor of Arizona, or a Tribal government of a resident Signatory Tribe in Arizona. For the purposes of this Agreement, emergencies may also be declared by ADOT's Director or the State Engineer, in consultation with the appropriate land managing agencies, if any. FHWA may request an extension of the period of applicability from ACHP prior to the expiration of the 30 days.
- B. Exempt from this Agreement are all immediate rescue and salvage operations needed to preserve life or property.
- C. ADOT shall determine whether the emergency undertaking has the potential to affect historic properties. If historic properties are likely to be affected by the emergency undertaking, ADOT shall notify FHWA, SHPO or THPO, as applicable; the appropriate land managing agency or Signatory Tribe; ASM, if the discovery is on state, county, or municipal land; and any Tribe that might attach religious and cultural significance to the affected property and afford them an opportunity to comment within five business days of the notification.
- D. Notification shall include, to the extent such information is available: description of the nature and extent of the property or properties, an assessment of National Register eligibility of any properties, the type and extent of any damage to the property, the proposed action, any treatment measures that would take the effects into account, and a request for comments.
- E. ADOT shall provide SHPO or THPO, as applicable; any land managing agency or Signatory Tribe, and any other consulting parties to the undertaking, a narrative report documenting the actions taken in accordance with this expedited consultation process within 60 calendar days following the initiation of expedited consultation. SHPO or THPO, and any consulting parties to the undertaking, will have 30 calendar days to provide comments, after which ADOT will complete the narrative report and provide copies to SHPO or THPO and the consulting parties.
- F. Where possible, FHWA, with ADOT's assistance, shall ensure that such emergency actions are undertaken in a manner that does not foreclose future preservation or

restoration of historic properties. Where such emergency actions may affect historic buildings or structures, they shall be undertaken in a manner that is consistent with the SOI's Standards for the Treatment of Historic Properties wherever possible. In addition, where possible, FHWA, with ADOT's assistance, shall ensure that such actions shall be done with on-site monitoring by the appropriate preservation professional who meets the applicable professional qualification standards in Stipulation IV.

## XIX. Documentation and Reporting

### A. Documentation

1. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR § 800.11. Documentation requirements shall also meet the SHPO Survey Report Standards and the Antiquities Act standards and any current ASM policies as applicable.
2. Documentation prepared by LPAs, or their consultants, in support of findings and determinations made under this Agreement shall be submitted to ADOT for review and approval. ADOT shall transmit to FHWA, SHPO, and other consulting parties, only documentation that ADOT has reviewed and approved.
3. All documentation prepared under this Agreement shall be kept on file at ADOT and made available to consulting parties and the public at their request, consistent with applicable confidentiality requirements per Stipulation XX.

### B. Quarterly Reporting

1. On a quarterly basis, following the state of Arizona's fiscal year, ADOT shall compile and submit to the signatories and concurring parties to this Agreement a list of undertakings exempted from individual consultation as provided for under Stipulations X.C.1, X.F.1.a, X.F.2.a.i, XI.A.4, XII.A.1, and XV.E of this Agreement. The list will be prepared no later than four weeks after the end of each quarter (September 30, December 31, March 31, and June 30). This list shall include, but is not limited to, the following items for each undertaking, as applicable:
  - a. The undertaking name and project numbers.
  - b. A description of the undertaking.
  - c. A map showing the undertaking's location.
  - d. The number of acres for new survey.
  - e. The applicable exemption.
  - f. The applicable finding of No Historic Properties Affected.
  - g. The applicable finding of No Adverse Effect with Standard Conditions.

### C. Annual Report and Meeting

1. ADOT shall compile an annual report for submission to the signatories and concurring parties to this Agreement. Information in the report shall include, but is not limited to, a summary of actions taken under this Agreement, including all findings and determinations, accomplishments, public objections, and inadvertent effects or foreclosures.
2. The range and type of information included by ADOT in the report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which this Agreement, and its manner of implementation, constitutes an efficient and effective program alternative under 36 CFR Part 800.
3. ADOT shall prepare the report of these findings annually following execution of this Agreement. The initial report shall be prepared following completion of the first full state fiscal year under this Agreement. ADOT shall submit the annual reports to the signatories and concurring parties to this Agreement no later than September 30. The parties will have 30 calendar days to provide comments. If a signatory or concurring party does not respond within the comment period, ADOT will follow-up to verify the party has no comments. If the attempt at follow-up consultation is unsuccessful, FHWA will assume that the party has no comments on the annual report.
4. Annually, FHWA will hold a meeting to review the performance of this Agreement. FHWA will invite all signatories and concurring parties to attend. The time and location of the meeting will be determined through consultation with the parties and announced to the parties a minimum of 30 calendar days prior to the annual meeting.
5. ADOT shall post the annual report on its website so that the annual report is available for public inspection at the time it is submitted to the signatories and concurring parties. The web posting shall include a provision that allows the public to comment on the report. ADOT will consider public comments along with comments from the signatories and concurring parties to this Agreement.

### XX. Confidentiality

- A. Pursuant to 36 CFR §800.4(b), FHWA is required to take into account any confidentiality concerns raised by the Tribes or other consulting parties to the undertaking about the nature and location of any historic properties identified in the implementation of this Agreement. Under 36 CFR § 800.11(c), FHWA, or ADOT as a recipient of funding through the Program, may withhold from public disclosure certain information pursuant to Section 304 of NHPA. Section 304 allows FHWA or ADOT, in consultation with the SOI, to withhold the location, character, or ownership of a historic property if either

FHWA or ADOT determines that disclosure may: 1) cause a significant invasion of privacy; 2) risk harm to the historic property; or 3) impede the use of a traditional religious site by practitioners.

- B. For any Program-funded project on federal land, including land held in trust for Signatory Tribes by the BIA, information about the nature and location of archaeological resources may be withheld by the federal land managing agency under Section 9 of the ARPA (16 USC § 470hh) and its implementing regulations (43 CFR § 7.18), subject to any limitations therein.
- C. For any Program-funded project on lands owned or controlled by the state of Arizona, the state may withhold information that relates to the location of archaeological discoveries, as described in ARS § 41-841 or ARS § 41-844, and ARS § 39-125, or places or objects that are included on or may qualify for inclusion on the Arizona Register of Historic Places as described in section 41-511.04, subsection A, paragraph 9.
- D. Other restrictions on the public release of culturally sensitive information relating to cultural resources discovered on a Signatory Tribe's Tribal lands may apply pursuant to Tribal law and policy. FHWA will consult with any Signatory Tribe that raises confidentiality issues to ensure compliance with any applicable tribal law or policy restricting the release of culturally sensitive information about cultural resources found on the Signatory Tribe's land, as needed.
- E. Pursuant to this stipulation, the signatories and concurring parties agree to appropriately safeguard and control the distribution of any confidential information they may receive as a result of their participation in this Agreement. Such safeguarded information is exempt from disclosure under the Freedom of Information Act (5 USC § 552).

## XXI. Dispute Resolution

- A. All signatories and concurring parties to this Agreement shall strive to address and resolve disagreements informally.
- B. In the event that informal resolution cannot be achieved, any signatory or concurring party to this Agreement may object in writing to FHWA regarding any action carried out or proposed with respect to implementation of this Agreement. FHWA shall notify SHPO and within 10 calendar days, initiate consultation with the objecting party to resolve the objection.
- C. If after initiating such consultation with the objecting party FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to ACHP, including the agency's proposed response to the objection.

- D. Within 30 calendar days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
1. Advise FHWA that ACHP concurs with the agency's proposed response to the objection, whereupon FHWA will respond to the objection accordingly;
  2. Provide FHWA with recommendations, which the agency shall take into account in reaching a final decision regarding its response to the objection; or
  3. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4), and proceed to refer the objection and comment.
- E. FHWA shall take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4), with reference only to the subject of the dispute. FHWA shall notify all signatories and concurring parties of its decision with regard to the dispute.
- F. FHWA's responsibility to ensure that all actions under this Agreement that are not the subject of the dispute are carried out will remain unchanged.

## XXII. Additional Signatories

- A. Federal and state land managing agencies and resident Tribes are invited to become full signatories after execution of this Agreement. The process for becoming a full signatory is for the party to request approval for joining the Agreement from FHWA. Upon approval, FHWA, will sign the signature page in Attachment 9 (Supplemental Signature Page) and send it to the party for their signature. The party shall then return the signed signature page to FHWA.
- B. The name of any agency or Tribe that becomes a full signatory in accordance with Stipulation XXII.A shall be added to the first paragraph of the preamble and to a whereas clause identifying the agency or Tribe as a full signatory to the Agreement. FHWA shall provide a revised copy of the Agreement along with the signed signature page to all parties. A formal amendment to the Agreement will not be necessary.

## XXIII. Amendment

Any signatory to this Agreement may request that it be amended, whereupon the signatories will consult to reach a consensus on the proposed amendment. FHWA will seek input from the concurring parties on any proposed amendments. Any amendment to this Agreement must be signed by all signatories. FHWA will provide copies of the amendment to the concurring parties.

#### XXIV. Withdrawal

- A. Any signatory or concurring party to this Agreement may withdraw from the Agreement after first providing the other signatories written notice to explain the reasons for withdrawal and providing them an opportunity to consult regarding amendment of the Agreement to prevent withdrawal.
- B. In the case of withdrawal from this Agreement by a Signatory Tribe with Tribal lands within the scope of this Agreement, FHWA shall comply with 36 CFR Part 800, subpart B, for all Program-funded projects on or affecting lands within the withdrawing Tribe's Tribal lands, in lieu of this Agreement. For all Program-funded projects off the withdrawing Tribe's Tribal lands, FHWA shall consult with the Tribe pursuant to 36 CFR Part 800, subpart B, in lieu of this Agreement. Withdrawal from this Agreement by a Signatory Tribe does not terminate the Agreement.
- C. Withdrawal from this Agreement by a federal or state land-managing agency shall require FHWA to comply with 36 CFR Part 800 with respect to all undertakings on or affecting lands within that agency's jurisdiction, in lieu of this Agreement. Withdrawal from this Agreement by a federal or state land managing agency does not terminate the Agreement.

#### XXV. Termination

- A. If any signatory determines that it wants to terminate this Agreement, the signatory shall provide a thirty (30) day notification to the other signatories in writing to explain the reasons for proposing termination, and consult with the other parties to seek an amendment to the Agreement.
- B. Should such consultation result in an amendment to the Agreement avoiding termination, the signatories shall proceed to amend the Agreement in accordance with Stipulation XXIII and carry out its provisions as amended.
- C. Termination of the Agreement by a Signatory Tribe or federal or state land managing agency shall only apply to the lands under their respective jurisdiction. In such case, FHWA shall comply with 36 CFR Part 800, subpart B, for all undertakings on or affecting lands within the terminating Signatory Tribe's Tribal lands, or the terminating agency's lands within the scope of this Agreement. For Program-funded projects off the terminating Tribe's Tribal lands, FHWA shall consult with the Tribe pursuant to 36 CFR Part 800, subpart B, in lieu of this Agreement.
- D. Should ACHP, FHWA, ADOT or SHPO terminate this Agreement, either individually or collectively, the Agreement will be terminated in its entirety. Upon termination of this Agreement in its entirety, FHWA shall comply with 36 CFR Part 800, subpart B with respect to each individual undertaking that would otherwise be reviewed under this Agreement.

## XXVI. Duration

This Agreement shall remain in effect for a period of 10 years after the date it takes effect, unless terminated prior to that time. At least one year prior to the expiration date, FHWA will inform the signatories and shall consult to determine if the Agreement should be allowed to expire or whether it should be extended. This Agreement may be extended for an additional term, the length of which is to be agreed to by the signatories. The extension shall be codified through an amendment to this Agreement in accordance with Stipulation XXIII. Where there is no agreement by all the signatories, the Agreement will not be extended and will be terminated.

## XXVII. Counterparts

This Agreement may be executed in counterparts, each separately and together constituting one and the same document. Execution and delivery of this Agreement by facsimile or electronic mail shall be sufficient for all purposes and shall be binding on any party to this Agreement.

Execution of this Agreement by the FHWA, ADOT, SHPO and ACHP and implementation of its terms are evidence that FHWA has taken into account the effects of Program-funded undertakings on historic properties and afforded the ACHP an opportunity to comment.

## SIGNATORIES

### FEDERAL HIGHWAY ADMINISTRATION

By Karla S. Petty

Title Arizona Division Administrator

Date 12/10/2015

### ARIZONA STATE HISTORIC PRESERVATION OFFICE

By James W. Garrison

Title AZSHPO

Date 12/11/2015

### ADVISORY COUNCIL ON HISTORIC PRESERVATION

By John M. Fowler

Title EXECUTIVE DIRECTOR

Date 12/16/15

## INVITED SIGNATORIES

### ARIZONA DEPARTMENT OF TRANSPORTATION

By Dallas L. Hammit

Title Deputy Director / State Engineer

Date 12/11/2015

JAN 7 2016

INVITED SIGNATORY SIGNATURE PAGE

PROGRAMMATIC AGREEMENT

PURSUANT TO SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION  
ACT

REGARDING

IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE  
STATE OF ARIZONA

Arizona State Parks

By 

Title

Cultural Resources Manager

Date

1/4/16

INVITED SIGNATORY SIGNATURE PAGE

PROGRAMMATIC AGREEMENT

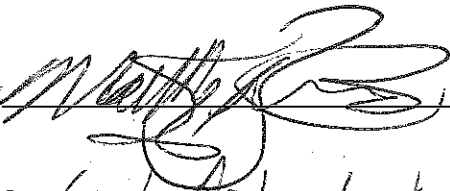
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ACT

REGARDING

IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE  
STATE OF ARIZONA

Arizona State Land Department

By

  
\_\_\_\_\_

Title

Lead Archaeologist  
\_\_\_\_\_

Date

1/5/2016

RECEIVED

JAN 5 2016

Federal Highway Administration/Arizona Department of Transportation Programmatic  
Agreement Attachment 9: Supplemental Signature Page

SIGNATURE PAGE

PROGRAMMATIC AGREEMENT

PURSUANT TO SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION  
ACT

REGARDING

IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE  
STATE OF ARIZONA

HUALAPAI TRIBE

By Phinix Wilhite Sr.

Title Vice Chairman

Date Jan. 12, 2016

FEDERAL HIGHWAY ADMINISTRATION

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

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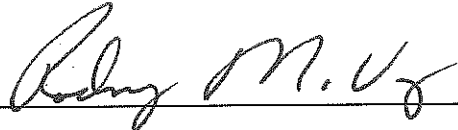
PROGRAMMATIC AGREEMENT

PURSUANT TO SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION  
ACT

REGARDING

IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE  
STATE OF ARIZONA

Bureau of Indian Affairs Western Regional Office

By 

Title Deputy Regional Director

Date 1-12-16

**INVITED SIGNATORY SIGNATURE PAGE**

**PROGRAMMATIC AGREEMENT**

**PURSUANT TO SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION  
ACT**

**REGARDING**

**IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE  
STATE OF ARIZONA**

FEB 8 - 2016

**U.S. Forest Service, Southwestern Region**

By 

Title Deputy Regional Forester

Date 1/29/16

FEB 10 2016

**INVITED SIGNATORY SIGNATURE PAGE**


**PROGRAMMATIC AGREEMENT**

**PURSUANT TO SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION  
ACT**

**REGARDING**

**IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE  
STATE OF ARIZONA**

**U.S. Bureau of Land Management**

By 

Title STATE Director

Date 2/2/2016

INVITED SIGNATORY SIGNATURE PAGE

PROGRAMMATIC AGREEMENT

PURSUANT TO SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION  
ACT

REGARDING

IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE  
STATE OF ARIZONA

U.S. Bureau of Reclamation

By Steve L. Wade  
ACTING FOR TERRANCE J. FULP, Ph.D

Title REGIONAL DIRECTOR

Date FEB 12 2016

**INVITED SIGNATORY SIGNATURE PAGE**


**PROGRAMMATIC AGREEMENT**

**PURSUANT TO SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION  
ACT**

**REGARDING**

**IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE  
STATE OF ARIZONA**

**U.S. Army Corps of Engineers, Los Angeles District**

By 

Title Chief, Regulatory Division

Date 16 February 2016

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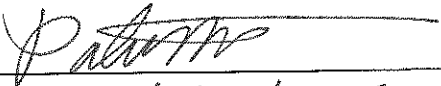
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ACT

REGARDING

IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE  
STATE OF ARIZONA

Arizona State Museum

By   
Patrick D. Lyons

Title Director

Date 4 Feb 16

**SIGNATORY SIGNATURE PAGE**

**PROGRAMMATIC AGREEMENT**

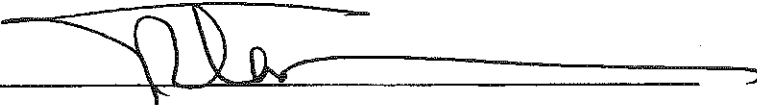
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ACT**

**REGARDING**

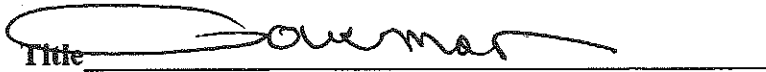
**IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE  
STATE OF ARIZONA**

**Gila River Indian Community**

By

A handwritten signature in black ink, appearing to be "P. L. L.", written over a horizontal line.

Title

A handwritten signature in black ink, appearing to be "Lawrence", written over a horizontal line.

Date

4-20-16

**Federal Highway Administration/Arizona Department of Transportation Programmatic Agreement Attachment 1: Bureau of Reclamation Programmatic Agreements**

- *“Programmatic Agreement Among the Bureau of Reclamation, Phoenix Office, the Arizona State Historic Preservation Officer, and the Salt River Project Regarding the Historic Preservation Treatment for the Salt River Project System of Historic Main Canals, Laterals, and Associated Features Operated and Maintained by the Salt River Project for the Bureau of Reclamation” (Reclamation PA 2013)*
- *“Programmatic Agreement Among the Bureau of Reclamation, Phoenix Area Office, Salt River Project, and the Arizona State Historic Preservation Office Regarding Historic Preservation Treatment for the Salt River Project System of Historic Dams and Associated Dam Facilities Operated and Maintained by the Salt River Project for the Bureau of Reclamation” (Reclamation PA 2009)*

## **PROGRAMMATIC AGREEMENT**

**Among**

**THE BUREAU OF RECLAMATION, PHOENIX AREA OFFICE, THE ARIZONA STATE  
HISTORIC PRESERVATION OFFICER AND SALT RIVER PROJECT**

**Regarding**

**HISTORIC PRESERVATION TREATMENT FOR THE SALT RIVER PROJECT  
SYSTEM OF HISTORIC MAIN CANALS, LATERALS AND ASSOCIATED  
FEATURES OPERATED AND MAINTAINED BY THE SALT RIVER PROJECT  
FOR THE BUREAU OF RECLAMATION**

**WHEREAS**, the Bureau of Reclamation (Reclamation), as the lead Federal agency, has determined that modifications and system upgrades to the Salt River Project (SRP) system of main canals, laterals, and associated features resulting from required operation and maintenance (O & M) and from continued pressures from urban development in and around the greater Phoenix, Arizona, metropolitan area will have continued effects upon the system and associated features and facilities; and

**WHEREAS**, SRP operates and maintains the canal and lateral system and associated features and facilities pursuant to the contract between the United States and the Salt River Valley Water Users Association (SRVWUA), dated September 6, 1917, such obligations of said contract having been assumed by SRP pursuant to a contract dated March 22, 1937, between SRP and SRVWUA, as amended, and SRP has participated in consultation and is a signatory to this Programmatic Agreement (PA); and

**WHEREAS**, this Agreement is concerned solely with that portion of the SRP system that is owned by the United States or for which the United States has obtained easements, and this system includes nine main canals (the Arizona, South, Consolidated, Eastern, Grand, Tempe, Western, Highline, and Arizona Crosscut), approximately 900 miles of secondary and tertiary laterals, most of which, but not all, are owned by the United States or for which the United States has easements, and associated facilities (the Old Cross Cut Canal, Fire Pond Pump House, Indian Bend Pump, and the San Francisco Lateral); and

**WHEREAS**, the Arizona Canal crosses the Salt River Pima-Maricopa Indian Community (SRPMIC), the SRPMIC has participated in consultation and has been invited to concur in this PA; and

**WHEREAS**, the Arizona, South, Eastern, Grand, Tempe, Western, and Highline canals, the San Francisco Lateral, and the Old Crosscut Canal have been determined eligible under criterion A for listing on the National Register of Historic Places (NRHP), and

**WHEREAS**, under a 1989 Memorandum of Agreement between Reclamation and the Arizona State Historic Preservation Officer (SHPO), to which SRP and the Arizona Department of Transportation concurred, Historic American Engineering Records (HAER) documentation was determined to be adequate mitigation for any and all present and future adverse impacts to the Tempe, Western, and Grand canals, the Fire Pond Pump House, and the Indian Bend Pump and Old Crosscut Canal. The HAER documentation for these properties has been completed and, in addition, SRP has completed HAER documentation for the Highline, Arizona, and South Canals, the San Francisco Lateral, and the Eastern Canal and is completing HAER documentation for the Consolidated and Arizona Crosscut canals; and

**WHEREAS**, SRP has identified piped laterals in downtown Glendale and the Little Maricopa Ditch (T2N, R3E, Centerline of Sections 31, 32, 33 and 34 along Oak Street) in Phoenix, AZ as the first two laterals to be piped in the Salt River Valley. If either of these two piped laterals is to be replaced in the future they will be reviewed for National Register eligibility. The rest of the piped laterals are not considered eligible; and

**WHEREAS**, the following mitigation measures as identified in the 2001 *Programmatic Agreement Among the Bureau of Reclamation, Phoenix Area Office, the Advisory Council on Historic Preservation, the Arizona State Historic Preservation Office, and Salt River Project, Regarding Historic Preservation Treatment for the Salt River Project System of Historic Main Canals, Laterals, and Associated Features Operated and Maintained by the Salt River Project for the Bureau of Reclamation* (2001 PA) have been completed:

- A. A lateral canal context study was completed by Salt River Project historian and archivist Shelly Dudley entitled: *A Historical Study of the SRP Distribution System*.
- B. Reclamation funded a PhD dissertation entitled: *Mixing Water and Culture: Making the Canal Landscape in Phoenix* by Alfred Simon and accepted by the SHPO as a context study for the main canals.
- C. Both documents were distributed to 24 historical museums, libraries, Federal and state agencies and city historic preservation offices.
- D. An inventory of all 123 miles of the remaining SRP open lateral canals was completed by the Bureau of Reclamation and reported in: *Open Lateral Canal Inventory, Salt River Project, Maricopa County, Arizona* (Report BOR-PXAO, ICRS-2012-21). This report detailed the survey and 27 miles of lateral canals identified for preservation.
- E. Twenty-Four interpretive signs were designed, manufactured and installed along SRP canals throughout the Phoenix metropolitan area.
- F. Interpretive programs on the SRP system have been developed and presented at Arizona Archaeology Expos, archaeology and history conferences, the Arizona Centennial, and a website was developed explaining Reclamation and SRP history; programs are planned to continue.
- G. Reclamation consulted with various valley cities on the history of canals and laterals in their communities and preservation of those features. Reclamation will continue to discuss and solicit information from Valley cities regarding interpretive programs and preservation concerns; programs are planned to continue.
- H. HAER documentation for all SRP main canals has been completed except for the Arizona Crosscut and Consolidated canals. These will be completed by SRP in the near future.
- I. Reclamation has surveyed and identified archaeological sites and historic properties, including standing structures along the main canal right-of-ways.

**WHEREAS**, the SHPO has concurred with Reclamation that the HAER documentation and completed stipulations under the 2001 PA constitutes adequate mitigation for present and future adverse effects to the subject properties; and

**WHEREAS**, the Advisory Council for Historic Preservation (Council), an original signatory, has declined to participate in the revision of this PA; and

**NOW, THEREFORE**, Reclamation, the SHPO, and SRP agree that the measures listed above are adequate mitigation for the main and lateral canals except as specifically identified below.

## **STIPULATIONS**

### **I. Education and Preservation Program:**

- A. Reclamation and SRP will seek opportunities to develop educational materials that explain and illustrate the history and significance of the canal system. Costs for public education will be shared equally by Reclamation and SRP with educational components designed and produced in consultation with each other. Educational materials may include signage on the main canals, educational materials for schools, exhibits, brochures and museum partnerships.
- B. Reclamation and SRP will continue to protect preserved laterals that have been determined worthy of preservation as identified in the lateral inventory report (BOR-PXAO-ICRS-2012-21).

### **II. Lateral Canal Survey and Consultation Process:**

- A. If an undertaking is planned that may affect an SRP-operated lateral within a local, state, or nationally designated historic district, SRP shall notify Reclamation as soon as possible. Reclamation, in consultation with SRP, the SHPO, the involved municipality, and the interested public, shall comply with 36 CFR Part 800.
- B. If an undertaking is planned that may affect a lateral not identified for preservation or within a designated historic district, Reclamation will survey that lateral for historic properties and carry out the following:
  - 1. When no historic properties are found as a result of Class III cultural resources survey of an undertaking's area of potential effects, Reclamation shall provide written documentation of the survey results and its finding that no historic properties are affected and proceed with the undertaking. Findings will be submitted to the SHPO in an annual report no later than Jan 15<sup>th</sup> of the following year as identified in Stipulation VI. For undertakings on lands within the boundaries of the SRPMIC, Reclamation shall also consult with the SRPMIC.
  - 2. Occasionally, as a result of previous consultation between the SHPO and Reclamation, historic properties within an undertaking's area of potential effect have been determined to be eligible for the NRHP. If such eligible properties will be avoided by project activities, Reclamation shall provide documentation of the survey and avoidance measures to the SHPO as a part of the annual report. For undertakings within the boundaries of the SRPMIC, Reclamation shall also consult with the SRPMIC.

3. Avoidance of direct and indirect effects on historic properties will ordinarily be understood to require retention of such properties in place and their protection against intentional and inadvertent damage resulting directly or indirectly from the undertaking.
  4. When historic properties may be adversely affected where Federal authority exists, Reclamation will consult with the SHPO, SRPMIC, Native American Tribes, and other consulting parties pursuant to 36 CFR 800.
  5. Reclamation will continue to consult with interested Native American Tribes
- C. For undertakings affecting laterals not identified in the list prepared jointly by Reclamation and SRP as outlined in Reclamation report BOR-PXAO-2012-21, Reclamation need only consult regarding historic properties and canal or lateral contributions to designated historic districts.
- D. When circumstances may force the piping of a preserved lateral, the following procedures will be implemented:
1. All proposals to pipe a preserved lateral begin with project design features to maintain those ditches open and in place. Proposed alternatives will be discussed with the SHPO. If the ditch still cannot be left open, the following steps will be completed:
    - A. Reclamation completes a cultural resources survey for the area of potential effect.
    - B. An initial report is submitted to the SHPO for review and consultation.
    - C. Public meetings are held with affected neighborhoods, communities and interested citizens.
    - D. Mitigation measures are developed in discussion with the SHPO and the community.
    - E. The project proponent incurs all costs for survey, public meetings and mitigation as well as any SRP and Reclamation administrative costs.

### **III. Main Canal Consultation Process:**

- A. Areas within the SRP system have received local, state, or national designations as historic districts; other areas may receive this designation in the future. These historic districts may include areas around SRP main canals. If an undertaking is planned that may adversely affect an SRP main canal within a local, state, or nationally designated historic district, Reclamation will follow the same review process as for laterals outlined under Stipulation II. D.
- B. Reclamation will continue to consult regarding undertakings affecting historic properties identified on the main canals in accordance with 36 CFR Part 800.

### **IV. Consultation with SRPMIC and Indian Tribes**

Reclamation shall consult with SRPMIC for all undertakings on lands within the boundaries of the SRPMIC. In addition, for undertakings affecting historic properties of importance to Native American Tribes, Reclamation shall consult with those Tribes that may attach religious and cultural significance to such properties.

### **V. Post-Review Discoveries of Historic Properties**

Should Reclamation discover an unexpected cultural resource after completion of the review process outlined in this PA for which no discovery plan is in place, Reclamation will consult with the SHPO and affected Tribes to determine eligibility and a treatment plan for the cultural resource. If Reclamation and the SHPO are unable to agree on a treatment plan for the discovered historic property, Reclamation shall consult with the Council pursuant to 36 CFR 800.6(b) (2). For historic properties discovered within the boundaries of the SRPMIC, Reclamation also will consult with the SRPMIC.

## **VI. Annual Reports**

Reclamation shall provide an annual report to the SHPO. This document will list all reports from the past year when a No Historic Properties Affected determination was made. The report will include project locations, project numbers, a listing of Register ineligible and eligible sites that were encountered and other supplementary information such as annual accomplishments and issues or concerns.

## **VII. Amendments to the PA**

Any Signatory to this PA may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.14(b) to consider such amendment.

## **VIII. Dispute Resolution**

- A. Should any Signatory to this PA object in writing to Reclamation regarding the manner in which the terms of this PA are carried out, or to any documentation or plan prepared in accordance with and subject to this Agreement, Reclamation shall consult with the objecting party to address the objection. If resolution is not reached, Reclamation shall forward documentation relevant to the objection to the Council, including Reclamation's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the Council may exercise one of the following options:
1. Concur with Reclamation's proposed response to the objection, whereupon Reclamation may proceed with its action in accordance with the agreed-upon response; or
  2. Provide Reclamation with recommendations, which Reclamation shall take into account in reaching a final decision regarding its response to the objection. Upon reaching its final decision, Reclamation will notify the objecting party and the Council of its final decision and proceed with its action; or
  3. Notify Reclamation that the objection will be referred for comment pursuant to 36 CFR Sec. 800.7(a) (4). Thereafter, the Council shall comment and Reclamation shall respond in accordance with 36 CFR Sec. 800.7(c).
- B. Should the Council not exercise one of the foregoing options within 30 days of receipt of all pertinent documentation, Reclamation may assume that the Council concurs with its proposed response to the objection, advise the objecting party of that response, and proceed with its action in a manner consistent with that response.

- C. At any time during the implementation of this Agreement, should an objection be raised by a member of the public, Reclamation shall immediately notify the other signatories in writing of the objection and take the objection into account. Reclamation shall render a decision regarding the objection, taking into account the views of the signatories to the Agreement.

**XI. Duration**

This Agreement shall remain in effect, unless amended or terminated, ending on December 31, 2030, at which time this Agreement is null and void. Thereafter, Reclamation shall comply with 36 CFR Part 800 which may include development, execution, and implementation of another Programmatic Agreement or similar document.

**X. Termination**

Any Signatory may terminate this Agreement by providing 30 days written notice to the other signatories provided that the parties consult during that period to seek agreement on amendments or other actions that would avoid termination.

**XI. Failure to Carry Out Terms of the Agreement**

In the event that the terms of this Agreement are not carried out, Reclamation shall comply with 36 CFR Part 800 with regard to individual actions covered by this Agreement or with another applicable Programmatic Agreement.

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION

By:  Date: 11/14/2013  
Randy Chandler, Phoenix Area Officer, Area Manager

SALT RIVER PROJECT

By:  Date: 10/29/2013  
John Sullivan, Associate General Manager and Chief Resources Executive, Resource Management

ARIZONA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 11/4/13  
James Garrison  
Arizona State Historic Preservation Officer

**CONCUR:**

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By:

Diane Enos, President

Date:

**PROGRAMMATIC AGREEMENT**

**AMONG  
THE BUREAU OF RECLAMATION, PHOENIX AREA OFFICE,  
SALT RIVER PROJECT, AND THE ARIZONA STATE  
HISTORIC PRESERVATION OFFICE**

**REGARDING**

**HISTORIC PRESERVATION TREATMENT FOR THE SALT RIVER PROJECT  
SYSTEM OF HISTORIC DAMS AND ASSOCIATED DAM  
FACILITIES OPERATED AND MAINTAINED BY THE SALT RIVER PROJECT  
FOR THE BUREAU OF RECLAMATION**

**WHEREAS**, the Bureau of Reclamation (Reclamation), as the lead Federal agency, has determined that modifications and system upgrades to the Salt River Project (SRP) system of dams and associated dam facilities resulting from required operation, maintenance, and replacement (OM&R) will have continued similar and repetitive effects upon the dams and associated facilities; and

**WHEREAS**, the Salt River Project Agricultural Improvement and Power District operates and maintains the dams and associated facilities pursuant to the contract between the United States and the Salt River Valley Waters Users Association (SRVWUA), dated September 6, 1917, such obligations of said contract having been assumed by SRP pursuant to a contract dated March 22, 1937, between SRP and SRVWUA, as amended, and SRP has participated in consultation and is a signatory to this Programmatic Agreement (Agreement); and

**WHEREAS**, this Agreement is concerned solely with that portion of the SRP system of dams and associated dam facilities that is owned by the United States or for which the United States has obtained easements, and this system includes seven dams: Theodore Roosevelt, Horse Mesa, Mormon Flat, Stewart Mountain, and Granite Reef Diversion Dams on the Salt River, and Horseshoe and Bartlett Dams on the Verde River; and

**WHEREAS**, Horse Mesa, Mormon Flat, Stewart Mountain, and Granite Reef Diversion Dams on the Salt River and Horseshoe and Bartlett Dams on the Verde River have been determined eligible for listing on the National Register of Historic Places, and safety of dam modifications to Theodore Roosevelt Dam have altered it so significantly that it is no longer considered eligible for listing on the National Register,

**WHEREAS**, previous safety of dam modifications to the above-mentioned dams required that Reclamation complete Historic American Engineering Records (HAER) documentation for Theodore Roosevelt, Horse Mesa, Mormon Flat, Stewart Mountain, Granite Reef Diversion, Horseshoe, and Bartlett Dams; and

**WHEREAS**, the other major complementary parts of the SRP system, consisting of nine main canals (the Arizona, South, Consolidated, Eastern, Grand, Tempe, Western, Highline, and Crosscut); approximately 1,200 miles of secondary and tertiary laterals, most of which, but not all, are owned by the United States or for which the United States has easements; and associated facilities (the Fire Pond Pump House, Indian Bend Pump Ditch, Old Crosscut Ditch, the San

Francisco Lateral) have also been determined eligible for listing on the National Register of Historic Places and are covered under a 2001 Programmatic Agreement between Reclamation, the Advisory Council on Historic Preservation (Council), the Arizona State Historic Preservation Office (SHPO), and SRP; and

**WHEREAS**, the Council has declined an invitation by Reclamation to participate in this Agreement; and

**WHEREAS**, the parties agree that consultation on future similar and repetitive O&MR undertakings affecting the dams would benefit from the flexibility provided for under 36 CFR Part C, Section 800.14(b)(1)(i), and wish to enter into this Agreement in order to facilitate those consultations;

**WHEREAS**, this Agreement is not a contract under Federal procurement guidelines; and

**WHEREAS**, the State of Arizona and the Arizona SHPO have certain stipulations that must be part of any Agreement signed by the State;

**NOW, THEREFORE**, SRP, the SHPO, and Reclamation agree that HAER documentation has been completed and has been agreed upon as adequate mitigation for OM&R activities at the dams and their associated facilities. No additional consultation shall be required for OM&R undertakings affecting these features except for certain cases that affect the **exterior** appearance of the dams and associated facilities, as noted below.

### STIPULATIONS

#### **I. Standard and Routine OM&R Activities**

SRP shall continue to conduct routine OM&R of the interior portions of the dams and associated facilities without Section 106 consultation with Reclamation and the SHPO. Certain routine OM&R activities (Attachment 1) on the exterior areas of the dams and associated facilities can also be done without consultation with Reclamation and SHPO.

- A. Associated facilities include, but are not necessarily limited to, powerhouses, various buildings used for storage, offices, workshops, living quarters, and so forth, including any facilities that may be abandoned and no longer in use.
- B. Attachment 1 is not an inclusive list. Other routine and standard OM&R items may be added after consultation with SHPO.

#### **II. Other than Standard and Routine OM&R Activities**

When an OM&R action not specifically listed in Attachment 1 is proposed for the exterior area of a dam or associated facility, SRP shall consult with Reclamation. If both SRP and Reclamation, after careful evaluation of the proposed OM&R action, determine that it will have no adverse effect to the visual integrity of the dam or associated facility, SRP may proceed with the OM&R action without SHPO consultation.

assumes SHPO concurrence, and the undertaking may occur with identified avoidance measures.

- C. Avoidance of archaeological properties will ordinarily be understood to require retention of such properties in place and their protection against intentional and inadvertent damage resulting directly or indirectly from the undertaking.
- D. When significant archaeological properties may be adversely affected by OM&R or other activities, Reclamation will consult with the SHPO pursuant to 36 CFR 800.

## **VI. Educational Awareness Program**

SRP currently offers classes to new and current employees on the historical significance of the SRP dam and canal system and its importance to the development of the Salt River Valley. These classes are presented on an occasional basis by staff from SRP Research Archives and Environmental Planning. SRP shall develop and implement a plan for continuing these educational classes on a regular basis that will continue for the duration of this Agreement.

- A. With the implementation of this Agreement, Reclamation shall take the lead, with assistance from SRP, to prepare documentation formally nominating the SRP dam and canal system to the National Register of Historic Places. The nomination will focus on the history of water management and the significant contributions the system has made to the agricultural and economic development of the Salt River Valley. Once formally listed on the National Register, Register plaques can be used at each of the dams and the main SRP headquarters building as part of the education awareness program.
- B. Nomination of the SRP system to the National Register shall in no way impede the OM&R of the SRP system. This Agreement (as well as the 2001 SRP Canals and Laterals Programmatic Agreement) provides adequate stipulations for mitigation of adverse effects from OM&R activities that ensure safe and efficient operation of the system of dams and canals.

## **VII. Amendments to the Agreement**

Any signatory to this Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.14(b) to consider such amendment. Where no consensus can be reached, the Agreement will not be amended.

## **VIII. Dispute Resolution**

- A. Should any party to this Agreement object in writing to Reclamation regarding the manner in which the terms of this Agreement are carried out, Reclamation shall consult with the objecting party to resolve the objection. If Reclamation determines that the objection cannot be resolved, Reclamation shall request the assistance of the Council and shall forward all documentation relevant to the objection to the Council. Within 30 calendar days after receipt of all pertinent documentation, the Council will either:

- A. At the beginning of each calendar year, Reclamation will submit to SHPO, for review and comment, a list of OM&R actions that were determined to have no adverse effect.

### **III. OM&R Activities Requiring Section 106 Consultation**

When an OM&R action not specifically listed in Attachment 1 has been determined by SRP and Reclamation to constitute either a questionable or a definite impact that would affect the visual integrity of a dam or associated facility, Reclamation will consult with SHPO. SHPO has 30 calendar days in which to review the proposed action and suggest possible alternative mitigation measures that may not have been considered by SRP and Reclamation but that could meet some or all of the OM&R needs without adversely impacting visual integrity. If no reasonable mitigation alternative is identified, or if the proposed mitigation alternative proves to substantially increase (10% or more) project cost, SRP may proceed with the original OM&R action.

- A. SRP shall notify Reclamation early in the planning process when it anticipates any OM&R effort that may result in significant visual effects to a dam or related facility.

### **IV. Emergencies and threats to safety and health**

During emergency situations, or in situations when employee or public safety or health is threatened, SRP can take all appropriate actions necessary to mitigate the threat. If the actions adversely affected the visual integrity of the dam or associated facilities, SRP shall document the nature the actions and their effect as soon as practical and notify Reclamation. Reclamation shall consult with SHPO as per 36 CFR 800.

### **V. Reclamation shall continue to consult with the SHPO as follows:**

When an OM&R undertaking is planned that may affect lands adjacent to a dam or dam facility, and these lands not have been previously surveyed for cultural resources, Reclamation will ensure that this land is surveyed for archaeological properties and carry out the following review steps:

- A. When no archaeological properties are found as a result of Class III cultural resources survey of an undertaking's area of potential effect, Reclamation shall provide written documentation to the SHPO of the survey, survey results, and its finding that no historic properties are present in the area of potential effects, and SRP may proceed with its undertaking without SHPO comment.
- B. Occasionally, as a result of previous consultation between the SHPO and Reclamation, archaeological properties within an undertaking's area of potential effect have already been determined to be eligible for the National Register of Historic Places. If such National Register-eligible properties will be avoided by project activities, Reclamation shall provide documentation of the survey or previous consultation and proposed avoidance measures to SHPO. The SHPO shall have 15 calendar days from date of receipt within which to object to Reclamation's finding of no adverse effect. If the SHPO objects to the determination, Reclamation shall comply with 36 CFR Part 800.6. If the SHPO does not respond within 15 calendar days from date of receipt, Reclamation

1. Concur with Reclamation's proposed response to the objection, whereupon Reclamation may proceed with its action in accordance with the agreed-upon response; or
  2. Provide Reclamation with recommendations which Reclamation shall take into account in reaching a final decision regarding the dispute; or
  3. Notify Reclamation that the objection will be referred for comment pursuant to 36 CFR Sec. 800.7(a)(4). Thereafter, the Council shall comment, and Reclamation shall respond in accordance with 36 CFR Sec. 800.7(c)(4).
- B. Should the Council not exercise one of the foregoing options within 30 calendar days of receipt of all pertinent documentation, Reclamation may assume that the Council concurs with its proposed response to the objection, advise the objecting party of that response, and proceed with its action in a manner consistent with that response.

#### **IX. Duration**

This Agreement shall remain in effect, unless amended or terminated, for a period of 20 years, at which time this Agreement is null and void unless the parties agree to an extension. If there is no extension, Reclamation shall comply with Section 106 in accordance with 36 CFR Part 800, which may include development, execution, and implementation of a new Agreement or similar document.

#### **X. Termination**

Reclamation, SRP, or the SHPO may terminate this Agreement by providing 30-calendar-days' written notice to the other parties, provided that the parties consult during that period to seek agreement on amendments or other actions that would avoid termination. In the event of termination, Reclamation will comply with 36 CFR 800.3 through 800.7 with regard to individual undertakings covered by this Agreement or with regard to all remaining actions under this Agreement.

#### **XI. Failure to Carry Out Terms of the Agreement**

In the event that the terms of this Agreement are not carried out, Reclamation shall comply with 36 CFR 800.3 through 800.7 with regard to individual actions covered by this Agreement or with another applicable Agreement.

#### **XII. State of Arizona Contracting Requirements**

##### **A. Equal Opportunity/Nondiscrimination**

The parties agree to comply with Chapter 9, title 41, Arizona Revised Statutes (Civil rights), Arizona Executive Orders 75-5 and 99-4, and any other Federal or State laws relating to equal opportunity and nondiscrimination, including the Americans with Disabilities Act.

## B. Conflict of Interest.

This Agreement is subject to cancellation by the State under A.R.S. § 38-511 if any person significantly involved in the Agreement on behalf of the State is an employee or consultant of the contractor at any time while the Agreement or any extension of the Agreement is in effect.

## C. Nonavailability of Funds

This Agreement shall be subject to available funding, and nothing in this Agreement shall bind the State and Federal parties to expenditures in excess of funds appropriated and allocated for the purposes outlined in this Agreement.

## D. Records

The parties agree that this Agreement does not involve the furnishing of goods, equipment, labor, materials, or services to the State of Arizona or any of its agencies, boards, commissions, or departments, and therefore that A.R.S. §§35-214 and 35-215 do not apply.

## E. Arbitration

The parties agree to utilize any arbitration that is required under applicable court rules.

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION

By: Carol Lynn Erwin Date: 1/20/2009  
Carol Lynn Erwin, Area Manager

SALT RIVER PROJECT

By: Richard M. Hayslip Date: 2/17/09  
Richard M. Hayslip, Associate General Manager,  
Environmental, HR, Land/PPC, Risk Management,  
and Telecom

ARIZONA STATE HISTORIC PRESERVATION OFFICER

By: James Garrison Date: 2/23/09  
James Garrison  
Arizona State Historic Preservation Officer

### **Attachment 1**

Following are routine and standard OM&R activities carried out by SRP under its agreement with Reclamation for managing and operating the dams and related facilities. The list is not inclusive; other OM&R items may be added as needed, once agreed to by the Signatories:

- Road maintenance activities, including dragging or grading road surface, application of surfacing materials, and installation and maintenance of drainage structures.
- Maintenance of logbooms and/or barrel booms in forebay and tailrace.
- Maintenance and/or replacement of signage.
- Maintenance and/or replacement of lighting at dam and plant areas.
- Protective coating maintenance at gates, fences, guardrails, spillway gates and operations equipment, penstocks, piping and valves, hardware, equipment cabinets, security devices, doors and windows, fuel tanks, cranes and hoists, platforms and stairs, walkways, buildings and other facilities. Colors shall be in-kind except where required for warning or safety purposes.
- Concrete repairs to dams, powerhouses, spillways, and related structures, including injection grouting of cracks and lift lines and replacement-in-kind of damaged or missing concrete.
- Operational testing of spillway gates, engine/generators, outlet valves, hoists, cranes, and other equipment.
- Maintenance and/or replacement of overhead power facilities including electrical transmission and distribution lines, poles and structures, transformers, switches, and related equipment.
- Maintenance and/or replacement of domestic water systems including storage tanks, pipelines, valves, and related equipment.
- Maintenance and/or replacement of transformers, breakers, and other electrical equipment.
- Roof maintenance and/or replacement at spillway towers, powerhouses, and associated buildings or facilities. Colors shall be in-kind to match existing where possible.
- Helipad and emergency landing area maintenance and safety upgrades.
- Door and window repairs shall be in-kind to match existing where possible.

- Maintenance, addition, and/or replacement of communications equipment including towers, structures, microwave dishes, antennas, cabling, and associated equipment.
- Maintenance and/or replacement of security devices including gates, cameras, fences, motion detectors, call boxes, and related equipment.
- Maintenance, recoating and/or replacement of seepage monitoring piping systems, collection facilities, weirs, and related equipment.
- Cleanup and removal of debris including vegetation, rock falls, and storm damage.

## **Federal Highway Administration/Arizona Department of Transportation Programmatic Agreement Attachment 2: Acronyms, Abbreviations and Definitions**

### **A. Acronyms and Abbreviations**

ACHP	Advisory Council on Historic Preservation
ADOT	Arizona Department of Transportation
Agreement	Programmatic Agreement (with reference to this Programmatic Agreement)
APE	Area of Potential Effects
ARPA	Archaeological Resources Protection Act
ARS	Arizona Revised Statutes
ASLD	Arizona State Land Department
ASM	Arizona State Museum
ASP	Arizona State Parks
BIA Navajo	Bureau of Indian Affairs, Navajo Regional Office
BIA Western	Bureau of Indian Affairs, Western Regional Office
BLM	Bureau of Land Management
CE	Categorical Exclusion
CFR	Code of Federal Regulations
CLG	Certified Local Government
CRP	Cultural Resources Professional
EP	Environmental Planner
EPG	ADOT Environmental Planning Group
FHWA	Federal Highway Administration
FR	Federal Register
HABS	Historic American Building Survey
HAER	Historic American Engineering Record
HPTP	Historic Properties Treatment Plan
IO	Isolated Occurrence
ISA	Interagency Service Agreement
ITS	Intelligent Transportation Systems
LPA	Local Public Agency
MOA	Memorandum of Agreement
NAE-SC	No Adverse Effect with Standard Conditions
NAGPRA	Native American Graves Protection and Repatriation Act
National Register	National Register of Historic Places
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
PA	Programmatic Agreement (with reference to Programmatic Agreements other than this Agreement)
POA	Plan of Action
Program	Federal-aid Highway Program
Reclamation	Bureau of Reclamation

ROW(s)	Right(s)-of-way
RTP	Recreational Trails Program
Section 106	Section 106 of the National Historic Preservation Act and its implementing regulations at 36 CFR Part 800
SHPO	State Historic Preservation Officer
SOI	Secretary of the Interior
SRP	Salt River Project
SRP System	Salt River Project System
TCE	Temporary construction easement
TCPs	Traditional cultural properties
THPO	Tribal Historic Preservation Officer
USACE	United States Army Corps of Engineers
USC	United States Code
USFS	United States Forest Service, Southwest Regional Office

## B. Definitions

1. Adverse Effect occurs when an undertaking may alter, directly or indirectly, any of the characteristics that qualify a historic property for inclusion in the National Register of Historic Places (National Register) in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association (see criteria of adverse effect at 36 Code of Federal Regulations [CFR] §800.5(a)(1)).
2. Advisory Council on Historic Preservation (ACHP) is an independent federal agency established pursuant to section 201 of National Historic Preservation Act (NHPA). Under Section 106 of the NHPA, the ACHP must be afforded an opportunity to comment on federal, federally assisted, or federally-licensed undertakings that may affect historic properties.
3. Archaeological Site generally means any material remains of past human life or activities in history or prehistory, which are of archaeological interest including, but not be limited to: pottery, basketry, bottles, weapons, projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items that are of human design, manufacture, possession, or use. Specific archaeological site definitions will follow appropriate land-managing agency guidelines.
4. Area of Potential Effects (APE) means the geographic area(s) within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR §800.16(d)). The APE must include all areas of direct, indirect, and reasonably foreseeable cumulative effects including, but not limited to, staging areas, temporary construction easements (TCEs), access roads, utility corridors, etc.

5. Buildings function primarily to provide shelter for human activity.
6. Concurring Parties are those interested parties who may be asked to sign an Memorandum of Agreement (MOA) or Programmatic Agreement (PA) but do not have the rights to amend or terminate the MOA or PA.
7. Consulting Parties have consultative roles in the Section 106 process and include the State Historic Preservation Officer (SHPO); Tribal Historic Preservation Officer (THPO) or THPOs; Indian tribes; land managing agencies, local governments; applicants for federal assistance, permits, licenses or other approvals; and, any party with a demonstrated legal or economic relation to the undertaking, or concern with the undertaking's effect on historic properties (36 CFR §800.2(c)). Consulting parties may be invited to be concurring parties or signatories to a MOA or PA.
8. Cultural Resources are prehistoric and historic districts, sites, buildings, structures, objects, cultural landscapes, sacred sites, and traditional cultural properties. Within the broad range of cultural resources are those that have recognized significance, which are called historic properties, as defined below.
9. Cultural Resources Inventory refers to the study of an area to identify the cultural resources that are, or may be, present. This term is inclusive of Class I, Class II, and Class III surveys. Class I means a literature/records overview. Class II means a sample inventory conducted in the field at less than 100% survey coverage. Class III means an intensive inventory conducted in the field at 100% survey coverage, as defined by SHPO (See SHPO Survey Report Standards, or its successor document).
10. Effect on an historic property occurs when an undertaking may alter characteristics of the property that may qualify it for inclusion in the National Register (36 CFR §800.16(i)).
11. Environmental Planner (EP) is an employee of the ADOT Environmental Planning Group whose responsibilities include overseeing environmental review, the development and completion of environmental documents, and ensuring delivery of projects.
12. Historic Property is any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes artifacts, records, and remains that are related to and located within such properties. The phrase "eligible for inclusion in the National Register" means properties formally determined as such by the Secretary of the Interior or by FHWA in consultation with SHPO. Properties that have been determined eligible for inclusion are accorded the same protections as properties listed in the National Register (36 CFR §800.16(l)(1)).
13. National Register of Historic Places (National Register) is the official list of districts, sites, buildings, structures, and objects significant in American history, architecture,

archaeology, engineering, and culture maintained by the Keeper of the National Register on behalf of the Secretary of the Interior (36 CFR Part 60).

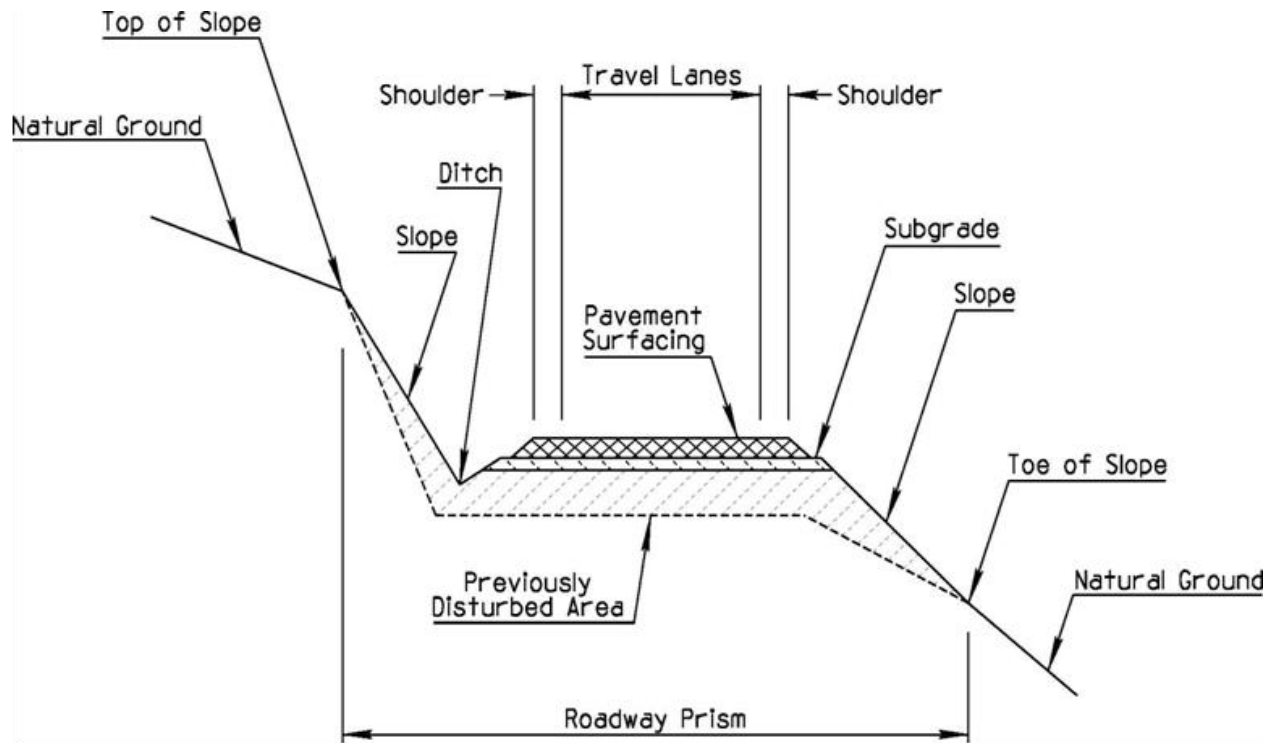
14. No Adverse Effect means that the undertaking will not alter any of the characteristics of an historic property that qualify it as National Register eligible by diminishing its historic integrity (see 36 CFR §800.5(b)).
15. No Historic Properties Affected means there are no cultural resources in the APE, there are cultural resources in the APE but none are determined to be National Register eligible, or there are historic properties in the APE but none will be affected by the undertaking.
16. Previously Disturbed refers to areas where previous construction, or other activities by human or natural agents, has physically altered soils within the three-dimensional APE to the point where there is no potential for an archaeologically significant property to remain, as determined by an ADOT CRP. These areas include, but are not limited to, the entire roadway prism, as defined in this Attachment, and depicted in Figure 1 below.
17. Project Manager refers to an ADOT employee who has the responsibility for ensuring that all project development steps are followed, and for leading and coordinating work efforts as required for the successful completion of all work tasks to meet the project objectives. The project manager has responsibility for the project scope, schedule and budget, and for monitoring project on project activities.
18. Right-of-way (ROW) is the land utilized by a DOT or LPA for the purposes of transportation, which contains the traveled portion of a roadway and associated facilities, such as road shoulders, turnouts, medians, and rest areas, as well as the adjacent land required for routine maintenance of the roadway and associated facilities. A road ROW may be owned by the DOT or LPA, or it may be an easement that is granted by another landowner to the DOT or LPA for the operation and maintenance of the roadway. DOT ROW boundaries are typically demarcated by a fence that is maintained by the DOT. Portions of the ROW between the roadway prism and the fence may not be previously disturbed as defined in this Attachment.
19. Roadbed is the graded portion of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulders, as depicted in Figure 1.
20. Roadway Prism means the three-dimensional area of a roadway from the top of slope to the toe of slope that has been previously disturbed by roadway construction and as depicted in Figure 1. This also includes bridges, drainage culverts, walls, ditches, road surfaces, road shoulders, and road fills.

21. Shoulder is the paved or unpaved portion of the roadway contiguous with the travel lanes for accommodation of stopped vehicles, for emergency use and for lateral support of base and surface courses, as depicted in Figure 1.
22. Signatories or Signatory are parties who assume obligations under an MOA or PA. Signatories have the ability to terminate or agree to amend an MOA or PA. The term includes invited signatories, but does not include others who sign the MOA or PA as concurring parties.
23. Signatory Tribe means any resident Tribe of Arizona that has signed this Agreement as a full signatory, including Tribes with a National Park Service certified Tribal Historic Preservation Officer (see below) and those not currently certified.
24. Significance is the term used to indicate a cultural resource's eligibility for the National Register according to the criteria in 36 CFR §60.4.
25. State Historic Preservation Officer (SHPO) is the official appointed or designated by the Governor pursuant to Section 101(b)(1) of NHPA to administer the State historic preservation program (36 CFR §800.16(v)).
26. Structures are not designed principally to shelter human activity but to perform other necessary functions (e.g., bridges, dams, canals, roads, railroads).
27. Subgrade is the roadbed materials beneath the pavement structure.
28. Tribal Lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities (36 CFR § 800.16(x)). Within the scope of this Agreement, the NHPA definition is identical to the Native American Graves Protection and Repatriation Act (NAGPRA) definition, 25 U.S.C. §3001(15).
29. Tribal Historic Preservation Officer (THPO) is an individual designated by an Indian tribe to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide (NHPA Section 101(d)(2)(B)). On Tribal lands, a THPO, representing the Tribe, may assume the duties of the SHPO, in whole or in part, as certified by the National Park Service (36 CFR §800.16(w)).
30. Traditional Cultural Property (TCP), as defined in National Register Bulletin 38, is a property that is listed in, or is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that are: (1) rooted in that community's history; and (2) important in maintaining the continuing cultural identity of the community (see National Park Service Bulletin 38 cited in Stipulation II). Traditional Cultural Properties are referred to in 36 CFR Part 800 as properties of

religious and cultural significance, which may be historic properties as defined in 36 CFR §800.16(1)(l)).

31. Undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency including: (1) those carried out by or on behalf of the agency; (2) those carried out with federal financial assistance; (3) and, those requiring a federal permit, license, or approval (36 CFR § 800.16(y)).

**Figure 1: Illustration of Roadway Prism**



### **Federal Highway Administration/Arizona Department of Transportation Programmatic Agreement Attachment 3: Screened Undertakings Exempted from Further Review**

Screened undertakings, limited to those listed in the tables below, are classes of undertakings that, under certain conditions, will not cause effects to historic properties, and with appropriate screening, may be determined by an ADOT Cultural Resources Professional (CRP) to be exempt from further Section 106 review under this Agreement.

- A. This Attachment applies when all the general conditions listed below are met, *and*, any task-specific conditions are also met. The screening process, which will be conducted by a CRP, may include one or more of the following:
  - 1. Literature/records review to determine potential for involvement of historic properties.
  - 2. Field check of project area.
  - 3. Reviewing detailed project plans.
  - 4. Contacting Native American tribes, land managing agencies, local historical societies, or other potential consulting parties who may have information or concerns.
  - 5. Reviewing aerial photographs, historic maps, or as-built records.
  - 6. Reviewing right-of-way, assessment parcel, or ownership data.
- B. Based on the outcome of the screening process, the ADOT CRP may determine that individual undertakings are exempt from further review. When a Program-funded undertaking is on Tribal or federal land, FHWA or ADOT will consult with the appropriate Signatory Tribe or agency in accordance with Stipulations V or VI, as applicable.
- C. If the ADOT CRP determines that an undertaking is exempted from further review, the ADOT CRP will prepare a Screening Memo to the ADOT Environmental Planner (EP), with a copy to FHWA, for inclusion in the project file to document completion of the Section 106 process for applicable classes of screened undertakings and no further review will be necessary. All screened undertakings will be summarized in a quarterly report, as required in Stipulation XIX.B.
- D. If the ADOT CRP determines that the undertaking has potential to affect historic properties, additional Section 106 review will be required following the steps outlined in Stipulation X of this Agreement.

ROADWAYS	
General Conditions	Specific Conditions
<ol style="list-style-type: none"> <li>1. The undertaking is limited to the existing right-of-way.</li> <li>2. The undertaking is limited to areas that have been previously disturbed, as defined in Attachment 2; or, the undertaking is limited to areas that have been previously inventoried to current standards for historic properties with negative results.</li> <li>3. The undertaking is not located within or adjacent to a historic property, or a National Register of Historic Places (National Register) listed historic district, or a National Historic Landmark, or a traditional cultural property (TCP), except for historic roads as described in #4 below.</li> <li>4. The exempted undertakings may be carried out on roads that are historic properties provided that an ADOT CRP determines the exempted undertaking will have no effect to the property's character defining features.</li> <li>5. The undertaking has no known public or Tribal controversy based on historic preservation issues.</li> </ol>	
<b>General Maintenance and Repairs</b>	
Vegetation control, including mowing, burning, cutting and spraying of noxious weeds.	
Routine roadway and roadside maintenance and repair activities within existing interchanges, medians, and adjacent frontage roads.	
<b>Pavement Resurfacing, Restoration, and Replacement</b>	
Restore, rehabilitate, and/or resurface existing pavement including sealcoats, chipseal, milling, grooving, patching, etc.	Does not extend beyond the existing roadway prism.
Pavement reconstruction, resurfacing, placement of sealcoats and chipseals, and/or crack filling.	Does not extend beyond the existing roadway prism.
Roadway rehabilitation and reconstruction that may include construction of turning lanes, parking lots, auxiliary lanes and shoulder widening.	
<b>Lane Additions and Widening</b>	
Widening of existing road including minor changes in road alignment.	Additions limited to less than one lane width (12 feet).
<b>Shoulders</b>	
Paving or widening existing shoulders.	
Adding new shoulders.	

<b>ROADWAYS (Continued)</b>	
<b>Intersection/Interchange Improvements</b>	
Intersection improvements including construction of turn and auxiliary lanes, minor realignment of on/off ramps, channelization, signage, pavement markings, etc.	
Placement of fill material on the side slopes of intersection crossroads and access for purposes of flattening these slopes to meet safety criteria.	
<b>Roadway Safety</b>	
Removal of hazardous waste, traffic accident cleanup, objects on the roadway.	
Emergency repairs to maintain integrity of bridges and roadways.	
Storm damage repairs and debris cleanup and removal.	
Installation, repair, or replacement of fencing including highway fencing, wildlife fencing, vandal fencing, etc.	
Installation of or repairs to guardrails, median barriers, safety barriers, guideposts, glare screens, etc.	
Installation, removal, replacement of roadway markings such as painted stripes, raised pavement markers, rumble strips, sensors, traffic impact attenuators, etc.	
Clear zone safety improvements including removal of rock fall and fixed objects.	Does not include roadside memorials.
Construction in areas of continuous slides, rock removal within the exiting rights-of-way, installation of rock fall containment systems.	

<b>SIGNAGE, LIGHTING AND SIGNALIZATION</b>	
<b>General Conditions</b>	<b>Specific Conditions</b>
<ol style="list-style-type: none"> <li>1. The undertaking is limited to the existing right-of-way.</li> <li>2. The undertaking is limited to areas that have been previously disturbed, as defined in Attachment 2, or the undertaking is limited to areas that have been previously inventoried to current standards for historic properties with negative results.</li> <li>3. The undertaking has no known public or Tribal controversy based on historic preservation issues.</li> <li>4. The undertakings may be carried out on roads that are historic properties provided that an ADOT CRP determines the undertaking will have no effect to the property's character defining features.</li> </ol>	
Installation, repairs, replacement, and maintenance of highway signs including directional, safety and operational signs, mile marker signs, right-of-way markers, etc.	

<b>SIGNAGE, LIGHTING AND SIGNALIZATION (Continued)</b>	
Installation, replacement, upgrade to, or addition of lighting to roads, highways and intersections.	
Installation, repair, or replacement of traffic signalization and control systems.	

<b>ROADWAY MONITORING AND SURVEILLANCE</b>	
<b>General Conditions</b>	<b>Specific Conditions</b>
<ol style="list-style-type: none"> <li>1. The undertaking is limited to the existing right-of-way.</li> <li>2. The undertaking is limited to areas that have been previously disturbed, as defined in Attachment 2; or, the undertaking is limited to areas that have been previously inventoried to current standards for historic properties with negative results.</li> <li>3. The undertaking has no known public controversy based on historic preservation issues.</li> </ol>	
Installation of highway monitoring systems including cameras, radio systems, metering equipment, traffic loop detectors, Intelligent Transportation Systems (ITS).	

<b>EROSION CONTROL</b>	
<b>General Conditions</b>	<b>Specific Conditions</b>
<ol style="list-style-type: none"> <li>1. The undertaking is limited to the existing right-of-way.</li> <li>2. The undertaking is limited to areas that have been previously disturbed, as defined in Attachment 2; or, the undertaking is limited to areas that have been previously inventoried to current standards for historic properties with negative results.</li> <li>3. The undertaking will not result in indirect effects to historic properties in other parts of the existing road right-of-way or areas outside of the existing road right-of-way.</li> <li>4. The undertaking has no known public or Tribal controversy based on historic preservation issues.</li> </ol>	
Erosion control measures including slide and slope corrections, placement of rip rap, scour control measures, and emergency erosion control measures.	

LANDSCAPING	
General Conditions	Specific Conditions
<ol style="list-style-type: none"> <li>1. The undertaking is limited to the existing right-of-way.</li> <li>2. The undertaking is limited to areas that have been previously disturbed in Attachment 2; or, the undertaking is limited to areas that have been previously inventoried to current standards for historic properties with negative results.</li> <li>3. The undertaking will not result in indirect effects to historic properties in other parts of the existing road right-of-way or areas outside of the existing road right-of-way.</li> <li>4. The undertaking has no known public or Tribal controversy based on historic preservation issues.</li> </ol>	
Installation, replacement, maintenance or removal of landscaping.	

CULVERT, DITCHES, AND DRAINAGE SYSTEMS	
General Conditions	Specific Conditions
<ol style="list-style-type: none"> <li>1. The undertaking is limited to the existing right-of-way.</li> <li>2. The undertaking is limited to areas that have been previously disturbed, as defined in Attachment 2; or, the undertaking is limited to areas that have been previously inventoried to current standards for historic properties with negative results; or the undertaking is limited to the active floodplain.</li> <li>3. The undertaking has no known public controversy based on historic preservation issues.</li> </ol>	
Repair, rehabilitation, and replacement of minor drainage features, including culverts, pipes, intake/outtake features, drainage ditches and rundowns	Limited to within the highway right-of-way where no new ground disturbance will occur. Replacement to take place in the same general location(s) as existing. This exemption does not apply to Civilian Conservation Corps or Works Project Administration or other historically significant drainage features.

<b>CULVERT, DITCHES, AND DRAINAGE SYSTEMS (Continued)</b>	
Improving existing drainage system elements; reestablishment of existing ditches to original width; stream stabilization and restoration.	Limited to the active channel. Access to the work site to be limited to areas that have been previously disturbed, as defined in Attachment 2, or previously inventoried to current standards for historic properties with negative results.

<b>BRIDGES</b>	
<b>General Conditions</b>	<b>Specific Conditions</b>
<ol style="list-style-type: none"> <li>1. The undertaking is limited to the existing right-of-way.</li> <li>2. The undertaking is limited to areas that have been previously disturbed, as defined in Attachment 2; or, the undertaking is limited to areas that have been previously inventoried to current standards for historic properties with negative results; or the undertaking is limited to the active channel and or floodplain.</li> <li>3. The undertaking has no known public controversy based on historic preservation issues.</li> </ol>	
Replacement, reconstruction, rehabilitation, relocation, and structural alterations.	Applies only to bridges that are not National Register eligible.

UTILITIES	
General Conditions	Specific Conditions
<ol style="list-style-type: none"> <li>1. The undertaking is limited to areas that have been previously disturbed, as defined in Attachment 2; or, the undertaking is limited to areas that have been previously inventoried to current standards for historic properties with negative results.</li> <li>2. The undertaking has no known public or Tribal controversy based on historic preservation issues.</li> </ol>	
Potholing for utilities.	
Installation, relocation, replacement, or repair of underground utilities including conduits, fiber optic cables, pipelines, etc.	

RAILROADS	
General Conditions	Specific Conditions
<ol style="list-style-type: none"> <li>1. The undertaking is limited to the existing road right-of-way.</li> <li>2. The undertaking will not affect any character defining features of a larger railroad related historic property or historic district.</li> <li>3. The undertaking is limited to areas that have been previously disturbed, as defined in Attachment 2; or, the undertaking is limited to areas that have been previously inventoried to current standards for historic properties with negative results.</li> <li>4. The undertaking has no known public or Tribal controversy based on historic preservation issues.</li> </ol>	
Installation, removal, replacement, reconstruction, or alterations to railroad crossings including surfaces, gates, signals, warning signs, flashing lights, etc.	
Maintenance, repair and replacement of railroad tracks, rail beds, ties, circuitry.	

<b>MISCELLANEOUS</b>	
<b>General Conditions</b>	<b>Specific Conditions</b>
<ol style="list-style-type: none"> <li>1. The undertaking is limited to the existing right-of-way.</li> <li>2. The undertaking is not located within or adjacent to a historic property, or a National Register listed historic district, or a National Historic Landmark or a TCP, except for historic roads. The exempted undertakings may be carried out on or adjacent to roads that are historic properties provided that an ADOT CRP determines the exempted undertaking will have no effect to the property's character defining features.</li> <li>3. The undertaking is limited to areas that have been previously disturbed, as defined in Attachment 2; or, the undertaking is limited to areas that have been previously inventoried to current standards for historic properties with negative results.</li> <li>4. The undertaking has no known public or Tribal controversy based on historic preservation issues.</li> </ol>	
<b>General</b>	
Development of construction staging and temporary use areas for stockpiling equipment, gravels, and waste materials.	
Construction of wetland mitigation areas, wetlands testing and delineation, wetlands enhancement activities.	
<b>Land Acquisition and Disposal</b>	
Disposal or transfer of excess properties.	Limited to parcels that do not contain historic properties.
Right-of-way activities such as hardship acquisition; advanced acquisition; or acquisition of scenic or conservation easements.	Limited to parcels that do not contain historic properties.
<b>Testing and Drilling</b>	
Engineering tests, including seismic, geologic, hazardous materials testing, drill samples, geotechnical boreholes, etc., in and outside highway right-of-way.	Limited to previously disturbed areas, as defined in Attachment 2, or areas inventoried for historic properties to current standards with negative results.
<b>Noise Barriers</b>	
Installation of noise barriers or retaining walls and other noise reduction measures.	
<b>ADOT Owned Properties</b>	
Construction or improvements to existing rest areas, chain control, park and ride lots, weigh stations, etc., where no new right-of-way is acquired.	

<b>MISCELLANEOUS (Continued)</b>	
<b>ADOT Owned Properties (Continued)</b>	
Restoration, rehabilitation, reconstruction of building and structures.	Limited to buildings and structures that are not National or State Register eligible.
Construction of bus transfer structures, visitor centers, museums.	
<b>Curb, gutter, and sidewalk</b>	
Installation, replacement, or repair of curbs and gutters; sidewalk improvements.	Limited to sidewalks that are not contributors to National or State Register-eligible properties.
<b>Streetscapes</b>	
Streetscape improvements including installation or removal of benches, boulders, garbage receptacles, signage, lighting, landscaping, and pavers.	
<b>Americans with Disabilities Act (ADA) Compliance</b>	
Installation of and improvements to ADA-compliant features.	Not within a historic property, historic district, National Historic Landmark, or TCP, other than the Historic State Highway System.
<b>Bicycle, Recreational, Pedestrian Trails</b>	
Construction, rehabilitation, and widening of existing bicycle and pedestrian trails, walkways and amenities.	
<b>Transit facilities</b>	
Modernization of transit facilities within existing property boundaries including roadway resurfacing, installation of bus shelters, pullouts, park and ride facilities, bike racks, benches, etc.	Not within a historic property, historic district, National Historic Landmark, or TCP.

## **Federal Highway Administration/Arizona Department of Transportation Programmatic Agreement Attachment 4: Defining the Area of Potential Effects**

In accordance with the Stipulation X.D.1 of this Agreement, ADOT, on behalf of FHWA, will establish the area of potential effects (APE) for Program-funded undertakings. When the guidelines below are followed, specific consultation with the State Historic Preservation Officer (SHPO), and any other consulting parties, to define the APE will not be necessary, although ADOT, on behalf of FHWA, may consult with SHPO when needed for particularly large or complex undertakings, when the undertaking may be controversial in nature, or for other circumstances. However, when a Program-funded undertaking is on Tribal, federal or state land, FHWA or ADOT will consult or coordinate with the appropriate Signatory Tribe or agency in accordance with Stipulations V or VI, as applicable, in determining the APE. The ADOT Cultural Resources Professional (CRP) and ADOT Project Manager are jointly responsible for defining the APE or redefining the APE.

### **Defining the APE**

- A. Defining the APE depends on an undertaking's potential to affect historic properties. Effects to be considered may include, but are not limited to, physical damage or destruction of all or part of a property; physical alterations; moving or realigning a historic property; isolating a property from its setting; visual, audible, or atmospheric intrusions; shadow effects; vibrations; and change in access or use.
- B. An APE delineates the boundaries within which it can be reasonably expected that a proposed undertaking has the potential to affect historic properties, should any be present. It may be the right-of-way itself or an area either larger or smaller than the right-of-way, depending on the scope and design of the undertaking.
- C. In defining the APE, ADOT, on behalf of FHWA, will address direct and indirect effects, and reasonably foreseeable cumulative effects, when warranted. Indirect effects may extend beyond the right-of-way to encompass visual, audible, or atmospheric intrusions; vibrations from construction activities; or change in access or use. ADOT, on behalf of FHWA, will carefully consider defining an indirect APE, particularly for potential audible and visual effects, taking into account proximity and use of adjoining properties, the surrounding topography, and other aspects of a property's setting. ADOT, on behalf of FHWA, shall also consider economic impacts that may adversely affect historic properties.
- D. For archaeological properties, an APE is typically established based on an undertaking's potential for direct effects from ground-disturbing activities. On occasion, archaeological sites may also have qualities that could be affected indirectly. Buildings, structures, objects, districts, and sites including traditional cultural properties (TCPs) are more likely

to be subject to indirect, as well as direct effects. ADOT will consider these factors in defining the appropriate APE for the undertaking.

- E. In defining the APE, ADOT, on behalf of FHWA, will consider the undertaking's potential effects on a historic property as a whole, including the reasonably anticipated or known boundaries of archaeological sites.

## **Federal Highway Administration/Arizona Department of Transportation Programmatic Agreement Attachment 5: No Adverse Effect with Standard Conditions**

This attachment identifies conditions that when met can be used to make a finding of “No Adverse Effect with Standard Conditions” in accordance with Stipulation X.F.2.a of this Agreement. When a Program-funded undertaking is on Tribal land, or lands managed by federal or state agencies, FHWA or ADOT will consult with the appropriate Signatory Tribe or agency in accordance with Stipulations V or VI, as applicable, in making a finding of No Adverse Effect with Standard Conditions.

### **Standard Conditions for Archaeological Sites, Buildings, and Structures**

The following standard conditions for a finding of No Adverse Effect are designed to protect archaeological sites, as well as, buildings and structures within the area of potential effects (APE) from the effects of project activities through avoidance. Avoidance is typically achieved using one or more of the following measures to protect properties from direct physical damage: fencing, flagging, signing, or monitoring.

ADOT Cultural Resources Professionals (CRPs) will develop an Action Plan and provide information to ADOT Environmental Planners (EPs), Project Managers and District personnel to protect properties during project activities through implementation of the Action Plan, as further described in Section E below.

The EPs shall ensure that provisions of an Action Plan are included in mitigation measures or environmental commitments developed for the project. During construction, the ADOT Resident Engineer shall ensure that contractors comply with the provisions of the Action Plan.

Archaeological sites that can be protected by the Action Plan may be considered eligible for inclusion in the National Register of Historic Places (National Register) for the purposes of the undertaking without subsurface excavation and/or surface collection. Buildings and structures may also be considered National Register eligible for the purposes of the undertaking without evaluation.

FHWA, with ADOT’s assistance, may make a finding of “No Adverse Effect with Standard Conditions” in accordance with Stipulation X.F.2.a, provided that all of the following conditions are met and have been approved by an ADOT CRP.

- A. Adequate information is available to accurately delineate the boundary of the archaeological site or the building or structure in relation to the anticipated project impacts and to identify contributing features of the site. This information may be obtained from literature review, surface survey, historical research, and/or consultation with Tribes and land managing agencies.

- B. The scope and design of the undertaking are sufficiently developed and detailed to ensure that the property will be protected from all adverse effects.
- C. All protection measures are defined (e.g., signing, staking, fencing, monitoring provisions) and included in the final National Environmental Policy Act (NEPA) document or categorical exclusion, contract provisions, construction plans, and/or other documents as appropriate. For Local Public Agency (LPA) projects, an ADOT Project Manager shall ensure the LPA has a copy of the Action Plan.
- D. A clear chain of command is established identifying specific tasks, responsibilities and contact information for each ADOT or LPA staff, consultant, or other party in the chain.
- E. The Action Plan is developed to ensure that provisions for protection are carried out. The Action Plan shall include, but is not limited to, the following:
  - 1. A description of the project, its scope, and design.
  - 2. Identification of the land managing agency or Tribe if the undertaking is on land under their respective jurisdictions.
  - 3. A description of the property and its contributing features in relation to the project scope and design.
  - 4. A discussion of the applicable criteria of eligibility.
  - 5. A commitment from ADOT District that the protective measures can and will be implemented.
  - 6. The protective measures that will be employed to ensure the property is avoided.
  - 7. Monitoring requirements, if any.
  - 8. Confirmation that funding for implementation of the protective measures is available.
  - 9. Confirmation that a consultant is under contract to implement protective measures where appropriate.
  - 10. Provisions for post review discoveries following Stipulation XVI.
- F. The Action Plan shall be attached to the No Adverse Effect with Standard Conditions finding. A number of the elements of the Action Plan as listed above may not be completed at the time the finding of effect is made; therefore the Action Plan will be updated, as needed, until the protective measures have been implemented.

## **Federal Highway Administration/Arizona Department of Transportation Programmatic Agreement Attachment 6: Standard Measures for Resolving Adverse Effects**

FHWA, with ADOT's assistance, may propose and carry out standard measures for resolving adverse effects to specific categories of historic properties in accordance with Stipulation X.G.1 of this Agreement. The following standard measures will apply to archaeological sites, or to historic buildings and structures, as presented below.

- A. Standard measures for resolving adverse effects to archaeological sites through data recovery. FHWA, with ADOT's assistance, will ensure that a Historic Properties Treatment Plan (HPTP) is prepared that includes, but is not limited to, the following:
1. Discussion of the National Register of Historic Places (National Register) significance of a property.
  2. Research design and questions that are directly pertinent to those data sets that qualify the property for inclusion in the National Register under Criterion D.
  3. Results of previous research relevant to the property type.
  4. Proposed data needs and proposed methods and techniques to acquire the data, including any special studies.
  5. Field methods and techniques that will cost-effectively address the property's structure and content in the context of the defined research questions and the property's stratigraphic and geomorphic context.
  6. Assumptions about the number and types of features expected and a proposed sampling strategy.
  7. Site-specific maps portraying the proposed data recovery (i.e., proposed trench or test unit placement).
  8. Laboratory processing and analyses, with justification of their relevance to the property and its research values.
  9. Methods and techniques used in artifact, data, and other record management.
  10. Provisions for ongoing Tribal consultation, monitoring, and coordination, if Tribal values or concerns are known or suspected.
  11. Provisions for Tribal perspectives in the preparation of research designs, data recovery plans and reports.
  12. Qualifications of key personnel.
  13. Disposition, including curation, of recovered materials and records resulting from implementation of the data recovery plan.
  14. All required permits.
  15. Report preparation schedule.
  16. A Monitoring and Discovery Plan including provisions and procedures for evaluating and treating discoveries of unexpected finds during the course of the project in accordance with Stipulation XVI of this Agreement.
  17. Explicit provisions for disseminating research findings to professional peers in a timely manner.
  18. Plan for public involvement and educational or interpretive programs, focusing

particularly on the community or communities that may have interest in the results.

B. Standard measures for resolving adverse effects to historic buildings and structures through Historic Americans Buildings Survey/Historic American Engineering Record (HABS/HAER) documentation. FHWA, with ADOT's assistance, will ensure that a HABS/HAER Documentation Plan is prepared that includes, but is not limited to, the following:

1. A description of each building or structure, its National Register significance, and its character defining features.
2. A discussion of relevant research questions and recording objectives in relation to the type and significance of the property.
3. The proposed level of HABS/HAER documentation and a justification for this documentation in relation to the anticipated adverse effects.
4. A description of methods to be used in collecting data needed to achieve the research and recording objectives.
5. Qualifications of key personnel.
6. A report preparation schedule.
7. A proposal for development of a public benefit document or other appropriate measures for public presentation.

C. Standards and Guidelines

1. All archaeological data recovery will be conducted following:
  - a. Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines, September 1983, U.S. Department of the Interior, National Park Service (48 Federal Register 44716, as updated) or its successor regulation.
  - b. Arizona Antiquities Act standards, for archaeological investigations on state, county, and municipal lands in Arizona.
2. All HABS/HAER documentation will be conducted following:
  - a. The Secretary of the Interior's Standards for Architectural and Engineering Documentation.
  - b. Secretary of the Interior's Standards for the Treatment of Historic Properties, July 1997, U.S. Department of the Interior, National Park Service (36 Code of Federal Regulations Part 68) or its successor regulation.

**Federal Highway Administration/Arizona Department of Transportation Programmatic Agreement Attachment 7: Protocol for Installing or Replacing Fencing and Signage**

- A. ADOT shall ensure that the procedures presented below are followed during installation or replacement of fencing and signage within the defined limits of eligible or unevaluated archaeological sites located in the area of potential effects (APE). The following procedures apply only to ROW fencing and to signage requiring post hole excavation no larger than 12 inches in diameter.
1. An archaeologist meeting the qualification standards in Stipulation IV shall monitor all ground disturbing activities associated with the installation or replacement of fences and signs within the defined boundaries of archaeological sites recommended or determined eligible for listing in the National Register of Historic Places (National Register). The monitor will ensure that the stipulations in this attachment are followed and that impacts to sites are minimized.
  2. An archaeologist, meeting the qualification standards in Stipulation IV, shall monitor post hole excavation for fences and signs if the site is unevaluated for National Register eligibility and an ADOT Cultural Resources Professionals (CRP) determines the site has potential for intact or significant subsurface deposits.
  3. No monitor will be required for installation or replacement of fences and signs within the boundary of sites determined not National Register eligible.
  4. No monitor will be required for installation or replacement of fences and signs within portions of National Register eligible sites that have been mitigated through archaeological data recovery.
- B. In addition, the following conditions apply for fence replacement within the defined boundaries of National Register eligible or unevaluated archaeological sites:
1. Vegetation requiring removal must be cut with hand tools at or above ground level.
  2. Whenever possible, new fence posts will be placed in the same hole as existing posts. If new posts cannot be placed in the same hole, then placement should occur as close as possible to the original post hole location within the existing right-of-way, unless it is determined through field observation by a CRP that a different location would have less potential impact on the site. The new installation will be monitored by an archaeologist meeting the qualification standards in Stipulation IV.
  3. No new gates, cattle guards, or other similar fence-related structures will be built within site boundaries.
  4. H-braces and corner braces will be located outside site boundaries wherever possible.

5. No heavy equipment will be allowed within site boundaries. This prohibition does not apply to the limited use of pick-up trucks or other passenger vehicles necessary for fence construction, or to tire-mounted skid steers used for augering in dry conditions and where such use will not damage the site.
- C. ADOT shall ensure that if cultural resources are encountered during the installation or replacement of fences or signs when no monitor is present, the person responsible for construction shall stop work immediately at that location and follow the procedures for Post-review discoveries in Stipulation XVI of this Agreement.
  - D. ADOT shall ensure that if the monitor determines these stipulations are not being met, or cannot be met, the person responsible for construction shall immediately stop work within the site. The monitor will report the situation to an ADOT CRP. ADOT will recommend to FHWA that the fence or sign construction project be addressed pursuant to the applicable provisions of Stipulation X.

**Federal Highway Administration/Arizona Department of Transportation Programmatic Agreement Attachment 8: Protocol for Recreational Trails Program Undertakings:**

- A. FHWA, with ADOT's assistance, will ensure that the Section 106 requirements for Recreational Trails Program (RTP) projects are met as follows.
1. Arizona State Parks (ASP) receives applications for RTP grants in January of each year. ASP reviews grant applications and recommends projects for funding to FHWA, typically in May of each year. ADOT will assist ASP in drafting and/or updating their grants manual to accurately describe the Section 106 review process for these federally funded grants and will include a timeline from the receipt of the application to the award of the funding.
  2. For those projects that are recommended for funding, ASP will forward the grant packet and all environmental related documents, including any cultural resources surveys or other cultural resources documentation relating to the project, to ADOT for review.
  3. When ADOT receives the grant packet and environmental documents, ADOT will work with the applicant to ensure all appropriate documents are present and sufficient. FHWA, with ADOT's assistance, will then initiate Section 106 consultation and follow Stipulation X in this Agreement, where applicable.
  4. Upon completion of the Section 106 requirements, ADOT will complete the documentation required under the National Environmental Policy Act (NEPA) for either an ADOT approved Categorical Exclusion (CE) issued on FHWA's behalf, or an FHWA approved CE. These approvals shall be made in accordance with FHWA's NEPA procedures and the Programmatic Agreement between FHWA and ADOT regarding the determination and approval of Categorical Exclusions Actions for Federal-Aid Highway Projects (2015).
- B. FHWA, with ADOT's assistance and in cooperation with ASP, shall ensure that the requirements of this Agreement are met prior to approving construction for any RTP project.

**Federal Highway Administration/Arizona Department of Transportation Programmatic Agreement Attachment 9: Supplemental Signature Page**

**SIGNATURE PAGE**

**PROGRAMMATIC AGREEMENT**

**PURSUANT TO SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT**

**REGARDING**

**IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF ARIZONA**

**NAME OF AGENCY OR TRIBE**

**By**\_\_\_\_\_

**Title**\_\_\_\_\_

**Date**\_\_\_\_\_

**FEDERAL HIGHWAY ADMINISTRATION**

**By**\_\_\_\_\_

**Title**\_\_\_\_\_

**Date**\_\_\_\_\_